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English LIBERTIES:

OR, THE

Free-Born SUBJECT's

INHERITANCE.

Being a Help to Justices as well as

A Guide to Constables,

CONTAINING,

I. **Magna Charta, the Petition of Right,** The **Habeas Corpus** Act, &c. With Comments upon each of them. The Proceedings in Appeals of Murder; The Work and Power of **Parliaments,** the Qualifications necessary for such as should be Chosen to that great Trust. The Advantage *Englishmen* enjoy by Trials by **Juries**; That they are Judges of Law as well as Fact; and are not Fineable, nor to be Punish'd, for going contrary to the Judges Directions.

II. Of **Justices of the Peace**; their Oath, Office, and Power, in many Respects; With several **Law-Cases** Alphabetically Digested for Ease and Brevity, and Warrants proper thereto, concluding with Directions for Drovers, Badgers, Butchers, Toll-keepers, and Clerks of the Market, &c.

III. The **Coroner** and **Constable's** Duty, Relating to Dead Bodies, Murder, Man-Slaughter, and Felo-de-se; Arrests, Escapes, and Conservation of the Peace. And Lastly, The **Church-Warden, Overseer,** and **Scavenger's** Duty at Large, in the most necessary Particulars.

First Compiled by **Henry Care,** *and now Inlarged with new and Useful Additions, by a Wellwisher to his Country. Dedicated to the Honourable* **House** *of* **Commons.**

LONDON, Printed and Sold by **Benj. Harris,** at the *Golden Bear's Head*, in *Grace Church-street*, 1703.

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JUL 1 1907

The Epistle Dedicatory.

To the Honourable House of Commons.

IF it be the *Misfortune of Great Personages, to fall as Sacrifices to the Usurpers of their Laws and Religion, no Wonder that the Lesser are Justled down and Trampled under Foot:* Witness some of the late Reigns, *when so many Noble Supporters of this Nation's Priviledges were Unlawfully Hurry'd and Dispatch'd to a better World: The Illegal Tryals, Suborn'd Evidences, Corrupt Judges, and Infatuated Superiors, who, Contrary to Law, Violated their Oaths, Broke our Laws, took away our Goods, and, by Cruel Butcheries, depriv'd too many Innocents of their Lives.* When was the time, *when* Britannia *lay Bleeding, and Religion turn'd out of Doors: When it was a Crime to have Christianity Expos'd, and the Errors of* Rome *spoke against: Then it was, Right Honourable, that I had seiz'd from me Five Thousand of this Book, besides a considerable Number of others, Writ purely for the Promoting the Protestant Interest, and Preserving intire (from Romish Usurpations) the Rights and Liberties of this Nation: Besides the Imposing on me Illegal Fines, two Years Imprisonment, and Corporal Punishment, as appears by the Resolutions of the* House of Commons, Hill. 31 *and* 32 Car. 2.

Accept therefore, Great Senators, these Weak Endeavours, which in more larger Volumes are

your own already; It is but an Abbreviation of the Laws, Rights and Priviledges of this Nation, which every Man and Woman become Heirs to so soon as they are born into the World; the which (as a Rich Dowry) was so settled upon each other at first, that all the Nations under the Copes of Heaven cannot Parallel the like; who may not only Wonder and Admire the Blessed Freedom of English-men, *but Condole their own Nativities, being born under the Tyrannick Yokes of Arbitrary Princes.*

In fine, English-men *cannot be made too sensible of the Worth of their Rights and Liberties, which Supports this Envy'd Isle from all the Incursions of Hell and* Rome; *The Assaults, Assassinations, and Combinations, of Popish Conspirators; and from the Force and Power of all Foreign Invasions, whose implacable Indeavours have been by Heaven all along Miraculously Defeated, their Plots and Counter-Plots Ruin'd, and their whole Scheme of Mischief blown away by the Breath of the Almighty: And we now live under an Auspicious Reign, Bless'd by a Sovereign Princess, whom God Almighty long preserve, to his Glory, and the Ease and Comfort of all Her Subjects. And now, that the Almighty may Bless* Great Britain, *the Defender of the Faith, Her present Most Gracious Majesty Queen* Anne, *and Both Houses of Parliament,*

Is the Desire and Prayer of

Your Honours Devoted Servant,

B. Harris.

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THE

THE PROEM.

THE Constitution of our English Government (the best in the World) is no Arbitrary *Tyranny*, like the Turkish Grand Seignior's, or the French King's, whose Wills (or rather *Lusts*) dispose of the Lives and Fortunes of their unhappy Subjects: Nor an *Oligarchy*, where the *great* ones (like Fish in the Ocean) prey upon, and live by devouring the *lesser* at their pleasure: Nor yet *a Democracy*, or Popular State; much less an *Anarchy*, where all confusedly are *hail fellows, well met*. But a most excellently mixt, or *qualified Monarchy*, where the King is vested with large *Prerogatives*, sufficient to support *Majesty*; and restrain'd only from Power of doing himself and his People *harm*, (which would be contrary to the very end of all Government, and is properly rather *weakness* than power) the *Nobility* adorn'd with Priviledges to be a *Screen* to Majesty, and a refreshing Shade to their Inferiors, and the *Commonality* too, so Guarded in their Persons and Properties by the Sense of Law, as renders them *Free-men*, not Slaves.

In *France*, and other Nations, the meer Will of the Prince *is Law*, his Word takes off any Man's *Head*, imposes *Taxes*, seizes any Man's *Estate*, when, how, and as often as he lists; and if one be *accused*, or but so much as suspected of any Crime, he may either presently Execute him, or Banish, or Imprison him at pleasure; or

if he will be ſo Gracious as to proceed by Form of their Laws, if any *two Villains* will but ſwear againſt the poor Party, his Life is gone. Nay, if there be *no Witneſſes*, yet he may be put to the *Rack*, the Tortures whereof make many an Innocent Perſon confeſs himſelf Guilty, and then with ſeeming *Juſtice* he is Executed; or, if he prove *ſo ſtout*, as in Torments to deny the Fact, yet he comes off with *Disjoynted Bones*, and ſuch Weakneſs as renders his Life a Burthen to him ever-after.

But in *England*, the Law is both the *Meaſure and the Bond* of every Subject's Duty and Allegiance, each Man having a fixed Fundamental Right born with him, as to *Freedom of his Perſon*, and *Property in his Eſtate*, which he cannot be deprived of, but either by his conſent, or ſome Crime, for which the Law has impos'd ſuch a Penalty or Forfeiture. For all our Kings take a ſolemn Oath (1) At their Coronation, *to obſerve and cauſe all the Laws to be kept*, which was done by our preſent moſt Gracious Soveraign: (2) Likewiſe all our Judges take an Oath, wherein, amongſt other points, they ſwear, (3) *To do equal Law and Right to all the King's Subjects, Rich and Poor, and not to delay any Perſon of Common Right for the Letters of the King, or of any other Perſon, or for any other Cauſe: But if any ſuch Letters come to them, they ſhall proceed to do the Law, the ſame Letters notwithſtanding:* Therefore ſaith *Forteſcue* (who was firſt *Chief Juſtice*, and afterwards Lord *Chancellor* to King *Henry* the 6th.) in his Book *de Laudibus Legum Angliæ*, cap. 9. *Non poteſt Rex Angliæ*, &c. *The King of* England *cannot alter nor change the Laws of his Realm at his pleaſure: For why, he Governeth his People by Power not only Royal, but alſo Politick: If his Power over them were only Regal, then he might change the Laws of his Realm, and charge his Subject with Tallage, and other Burthens without their conſent, and ſuch is the Dominion that the Civil Laws purport, when they cry,* Quod principi placuit Legis habet Vigorem, *The Princes pleaſure has the force of a Law. But from this*

(1) *See Book of Oaths*, p. 1. & 3.
(2) *Baker's Chr.* fol. 741.
(3) *Book of Oaths*, p. 216.

this much differeth the power of a King, whose Government over his People is Politick; For he can neither change Laws without the consent of his Subjects, nor yet charge them with Impositions against their Wills; Wherefore his People do frankly and freely enjoy and occupy their own Goods, being Ruled by such Laws as they themselves desire. Thus *Forteſcue*, with whom accords *Bracton*, a Reverend Judge, and Law-Author, in the Reign of King *Henry* the Third, saying—— *Rex in Regno ſuo ſuperiores habet, Deum & Legem; The King in his Realm hath two Superiours, God and the Law*; for he is under the *Directive*, though not *Coercive* Power of the Law; and on the ſame Score Judge *Vaughan*, ſpeaking of our *Fundamental Laws*, which are Coeval with the Government, ſticks not to ſay, *The Laws of* England *were never the Dictates of any Conqueror's Sword, or the Placita, or good Will and Pleaſure of any King of this Nation, or to ſpeak Impartially or Freely, the Reſults of any Parliament that ever ſate in this Land.* And the late cited *Forteſcue*, in his 13. *chap.* has a very apt ſimilitude to Illuſtrate and Demonſtrate this, *The Law* (ſays he) *taketh its Name*, a Ligando, *to bind, for thereby the Politick Body is knit and preſerv'd together, as the Natural Body, by the Bones, Sinews, and Members, which retain every one their proper Functions*; And, *as the Head of a Body Natural cannot change his Sinew, nor cannot deny or with-hold from his inferiour Members, their peculiar Powers, and ſeveral Nouriſhments of Blood and Spirits, no more can a King, which is the Head of a Body Politick, change the Laws of that Body, nor withdraw from his People their proper Subſtance, againſt their Wills and Conſents in that behalf.*

'Tis true, the Law it ſelf affirms, *The King can do no wrong*, which proceeds not only from a Preſumption, that ſo Excellent a Perſon *will do none*: But alſo becauſe he Acts nothing but by *Miniſters*, which (from the loweſt to the higheſt) are anſwerable for their Doings, ſo that if a King in his Paſſion ſhould command A. to kill B. without proceſs of Law, A. may yet be proſecuted by Indictment, or upon *an Appeal*, (where no Royal Pardon is allowable) and muſt for the ſame be Executed, ſuch Command notwithſtanding.

This Original happy frame of Government, is truly and properly call'd, an *English Man's Liberty*, a Priviledge, not to exempt from the Law, but to be freed in Person and Estate, from Arbitrary Violence and *Oppression*; A *greater Inheritance* (saith Judge *Cook*) *is deriv'd to every one of us from our Laws, than from our Parents*; For, without the former, what would the latter signifie? And this Birthright of *English-men*, shines most conspicuously in Two Things: 1. *Parliaments.* 2. *Juries.*

By the First the Subject has a share by his chosen Representatives in the *Legislative* (Law-making) Power; for, no new Laws bind the People of *England*, but such as are by common consent agreed on in that great Council.

By the Second, He has a share in the *Executive* part of the Law; no Causes being Tryed, nor any Man Adjudged to lose Life, Member, or Estate, but upon the Verdict of his Peers, (or Equals) his Neighbours, and of his own Condition: These Two Grand *Pillars* of *English Liberty*, are the Fundamental Vital Priviledges, whereby we have been, and are preserv'd more free and happy than any other People in the World, and (we trust) shall ever continue so; For, whoever shall design to Impair, Pervert, or Undermine either of these, do strike at the very Constitution of our Government, and ought to be Prosecuted and Punished with the utmost Zeal and Rigour. To cut down the *Banks*, and let in the Sea, or to Poyson all the *Springs and Rivers* in the Kingdom, could not be a greater Mischief; for this would only affect the present Age, but the other will Ruine and Enslave all our Posterity.

But besides these General *Paramount Priviledges*, which the English are Estated in by the Original Constitution of their Government, there are others more particularly declared and expressed in divers *Acts of Parliament*; of which, several of the most remarkable and useful are here presented at large to the Reader, with some *Notes* thereupon, for his better understanding of the same.

An

An Abstract of *MAGNA CHARTA*, or the Great Charter made in the Ninth Year of King *Henry* the Third, and Confirmed by King *Edward* the First, in the Eight and Twentieth Year of his Reign: being so much thereof as remains now in force.

EDward, *By the Grace of God, King of* England, *Lord of* Ireland, *and Duke of* Guyan: *To all Archbishops, Bishops,* &c. *We have seen the great Charter of the Lord* Henry, *sometimes King of* England, *our Father, of the Liberties of* England, *in these Words.*

HEnry, *By the Grace of God, King of* England, *Lord of* Ireland, *Duke of* Normandy *and* Guyan, *and Earl of* Anjou; *To all Arch-Bishops, Bishops, Abbots, Priors, Earls, Barons, Sheriffs, Provosts, Officers, and to all Bayliffs, and other our Faithful Subjects, which shall see this present Charter, Greeting. Know you, that We unto the Honour of Almighty God, and for the Salvation of the Souls of our Progenitors and Successors, Kings of* England, *to the Advancement of Holy Church, and Amendment of our Realm, of our meer and free Will, have Given and Granted to all Arch-Bishop, Bishops, Abbots, Priors, Earls, Barons, and to all Free men of this our Realm, these Liberties following, to be kept in our Kingdom of* England *for ever.*

A Confirmation of Liberties.

FIrst, We have granted, and given to all the Freemen of our Realm, for us and our Heirs for ever, these Liberties under-written, to have, and to hold to them and their Heirs for ever.

How Sureties shall be charged to the King.

II. WE, or our Bailiffs, shall not seize any Land or Rents for any Debt, as long as the

preſent Goods and Chattels of the Debtor do ſuffice to pay the Debt, and the Debtor himſelf be ready to ſatisfie therefore. (2.) Neither ſhall the Pledges of the Debtor be diſtrained, as long as the principal Debtor is ſufficient for the Payment of the Debt. (3.) And if the principal Debtor, fail in the Payment of the Debt, having nothing wherewith to pay, or will not pay where he is able, the Pledges ſhall anſwer for the Debt. (4.) And if they will, they ſhall have the Lands and Rents of the Debtor until they be ſatisfied of that which they before payed for him, except that the Debtor can ſhew himſelf to be acquitted againſt the ſaid Sureties.

The Liberties of London, *and other Cities and Towns confirmed.*

III. THe City of *London* ſhall have all the old Liberties and Cuſtoms which it hath been uſed to have. Moreover, we Will and Grant, that all other Cities and Borroughs, Towns, and the Birons of the five Ports, and all other Ports, ſhall have all their Liberties and free Cuſtoms.

Common Pleas ſhall not follow the King's Court.

IV. COmmon-Pleas ſhall not follow our Court, but ſhall be holden in ſome Place certain.

Where, and before whom Aſſizes ſhall be taken. Adjournment for Difficulty.

V. ASſizes of *Novel Diſſeiſin* and of *Mortanceſter*, ſhall be taken but in the Shires, and after this manner; If we be out of this Realm, our Chief Juſticers ſhall ſend out Juſticers through every Country once in the Year: Which, with the Knights of the Shire, ſhall take the ſaid Aſſizes in thoſe Counties. (2.) And thoſe things that at the coming of our aforeſaid Juſticers, being ſent to take thoſe Aſſizes in the Counties, cannot be determined, ſhall be ended by them in ſome other place in their Circuit. (3.) And thoſe

thoſe things which for Difficulty of ſome Articles cannot be determined by them, ſhall be referred to our Juſticers of the Bench, and there ſhall be ended.

Aſſizes of Darrein Preſentment.

VI. ASſizes of Darrein Preſentment, ſhall be always taken before our Juſticers of the Bench, and there ſhall be determined.

How Men of all ſorts ſhall be Amerced, and by whom.

VII. A Free-man ſhall not be amerced for a ſmall Fault, but after the manner of the Fault. And for a great Fault, after the greatneſs thereof, ſaving to him his contenement. (2.) And a Merchant likewiſe, ſaving to him his Merchandize. (3.) And any other Villain than ours ſhall be likewiſe amerced, ſaving his Wainage, if he fall into our Mercy. (4.) And none of the ſaid Amerciaments ſhall be Aſſeſſed, but by the Oath of honeſt and lawful Men of the Vicinage. (5.) Earls and Barons, ſhall not be amerced, but by their Peers, and after the manner of their offence. (6.) No Man of the Church ſhall be amerced after the Quantity of his Spiritual Benefice, but after his Lay-tenement, and after the Quantity of his Offence.

Making of Bridges and Banks.

VIII. NO Town nor Freeman ſhall be diſtrained to make Bridges nor Banks, but ſuch as of old time, and of right have been accuſtomed to make them in the time of King *Henry* our Grandfather.

Defending of Banks.

IX. NO Banks ſhall be defended from henceforth, but ſuch as were indefence in the time of King *Henry* our Grandfather, by the ſame places, and the ſame bounds as they were wont to be in his time.

Holding Pleas of the Crown.

X. NO Sheriff, Conſtable, Eſcheator, Coroner, nor any other our Bailiffs ſhall hold Pleas of our Crown.

The King's Debtor dying, the King ſhall be firſt paid.

XI. IF any that holdeth of Us Lay-fee do die, and our Sheriff or Bayliff do ſhew our Letters Patents of our Summons for Debt, which the Dead Man did owe to us: It ſhall be lawful to our Sheriff or Bayliff, to Attach and Inrol all the Goods and Chattels of the Dead, being found in the ſaid Fee, to the Value of the ſame Debt, by the Sight and Teſtimony of lawful Men; So that nothing thereof be taken away, until we be clearly paid off the Debt. (2.) And the reſidue ſhall remain to the Executors, to perform the Teſtament of the Dead. (3.) And if nothing be owing to Us, all the Chattels ſhall go to the uſe of the Dead (ſaving to his Wife and Children the reaſonable parts.)

How long Felons Lands ſhall be holden to the King.

XII. WE will not hold the Lands of them that be convict of Fellony but one Year and one Day, and then thoſe Lands ſhall be delivered to the Lords of the Fee.

In what place Wares ſhall be put down.

XIII. ALL Wares from henceforth ſhall be utterly put down by *Thames* and *Medway*, and through all *England*, but only by the Sea-coaſts.

In what caſe a Præcipe in Capite, *is not grantable.*

XIV. THe Writ that is called *Præcipe in Capite*, ſhall be from henceforth granted to no Perſon of any Free-hold, whereby any Free-man may loſe his Court.

XV.

There ſhall be but one Meaſure throughout the Realm.

XV. ONe Meaſure of Wine ſhall be through our Realm, and one Meaſure of Ale, and one Meaſure of Corn, that is to ſay, the Quarter of *London*. (2.) And one Breadth of died Cloath, Ruſſets, and Haberjects, that is to ſay, two Yards within the Liſts. (3.) And it ſhall be of Weights as it is of Meaſures.

Inquiſition of Life and Member.

XVI. NOthing from henceforth ſhall be given for a Writ of Inquiſition, nor taken of him that prayeth Inquiſition of Life or of Member, but it ſhall be granted freely, and not denied.

Wager of Law ſhall not be without Witneſs.

XVII. NO Bayliff, from henceforth, ſhall put any Man to his open Law, nor to an Oath, upon his own bare ſaying, without faithful Witneſſes brought in for the ſame.

None ſhall be condemned without Trial. Juſtice ſhall not be ſold or deferred.

XVIII. NO Freeman ſhall be taken or Impriſoned, or be diſſeiſed of his Freehold, or Liberties, or free Cuſtoms, or be outlawed, or Exiled, or any otherwiſe deſtroyed, nor we will not paſs upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. (2) We will ſell to no Man, we will not deny or defer to any Man, either Juſtice or Right.

Merchants, Strangers, coming into this Realm ſhall be well uſed.

XIX. ALl Merchants (if they were not openly prohibited before) ſhall have their ſafe and ſure Conduct to depart out of *England*, to come into *England*, to tarry in and go through *England*, as well by Land as by Sea, to buy and ſell without any manner

manner of evil Tools, by the old and rightful Cuſtoms, except in time of War. (2) And if they be of a Land making War againſt Us, and be found in our Realm at the beginning of the Wars, they ſhall be Attached without harm of Body and Goods, until it be known unto Us, or our Chief Juſtice, how our Merchants be intreated there in the Land making War againſt Us. (3) And if our Merchants be well intreated there, theirs ſhall be likewiſe with Us.

Tenure of a Barony, coming into the King's Hand by Eſchete.

XX. IF any Man hold of any Eſchete, as of the Honour of *Wallingford*, *Nottingham*, *Boloin*, or of any other Eſchetes which be in our Hand, and are Baronies, and dye, his Heirs ſhall give none other Relief, nor do none other Service to Us, than he ſhould to the Baron, if it were in the Baron's Hand. (2) And we in the ſamewiſe ſhould hold it as the Baron held it, neither ſhall we have, by occaſion of any Baron or Eſchete, any Eſchete, or Keeping of any of our Men, unleſs he that held the Barony or Eſchete, otherwiſe held of Us in Chief.

Lands ſhall not be alienated to the Prejudice of the Lord's Service.

XXI. NO Free-man, from hencetorth, ſhall give or ſell any more of his Land, but ſo, that of the Reſidue of the Lands, the Lord of the Fee may have the Services due to him, which belongeth to the Fee.

In what only Caſe a Woman ſhall have an Appeal of Death.

XXII. NO Man ſhall be taken or Impriſoned upon the Appeal of a Woman, for the Death of any other than of her Husband.

At

At what time ſhall be kept a County Court, Sheriffs turn, and a Leet.

XXIII. NO Country, from henceforth, ſhall be holden, but from Month to Month; and where greater time hath been uſed, there ſhall be greater. (2) Nor any Sheriff, or his Bayliff, ſhall keep his Turn in the Hundred, but twice in the Year; and no where but in due place, and accuſtomed, that is to ſay, once after *Eaſter*, and again after the Feaſt of St. *Michael*. (3) And the view of *Frank-pledge* ſhall be likewiſe at the Feaſt of St. *Michael* without occaſion. So that every Man have his Liberties which he had, or uſed to have in the time of King *Henry* our Grandfather, or which he hath purchaſed ſince. (4) The view of *Frank-pledge* ſhall be ſo done, that our Peace may be kept. (5) And that the Tything be wholly kept as it hath been accuſtomed. (6) And that the Sheriff ſeek no occaſions, and that he be content with ſo much as the Sheriff was wont to have, for his View-making, in the time of King *Henry* our Grandfather.

No Land ſhall be given in Mortmain.

XXIV. IT ſhall not be lawful, from henceforth, to any one, to give his Lands to any Religious Houſe, and to take the ſame Land again, to hold of the ſame Houſe. Nor ſhall it be lawful to any Houſe of Religion, to take the Lands of any, and to Leaſe the ſame to him of whom he received it: If any, from henceforth, give his Lands to any Religious Houſe, and thereupon be Convict, the Gift ſhall be utterly void, and the Land ſhall Accrue to the Lord of the Fee.

Notes

Notes on *Magna Charta.*

THis excellent Law holds the firſt place in our Statute Books, for though there were, no doubt, many Acts of Parliament long before this, yet they are not now Extant: 'tis called *Magna Charta*, or the Great Charter, not in reſpect of its Bulk, but in regard of the great Importance and Weight of the Matters therein contained; it is alſo ſtiled *Charta Libertatum Regni*, the Charter of the Liberties of the Kingdom, and upon great reaſon (ſaith *Cook* in his Proem) is it ſo called from the effect, *Quia liberos facit*, becauſe it makes and preſerves the People free.

Though it run in the ſtyle of the King *as a Charter*, yet (as my Lord *Cook* well obſerves on the 38 Chapter) it appears to have paſſed in Parliament; for there was then a Fifteenth granted to the King, by the Biſhops, Earls, Barons, Free-tenants and People, which could not be but in Parliament, nor was it unuſual in thoſe times, to have Acts of Parliament in a Form of a Charter; as you may read in the Prince's Caſe, *Co. Rep. L.* 8.

Likewiſe, though it be ſaid here, that the *King hath given and granted theſe Liberties*, yet they muſt not be underſtood as meer *Emanations* of Royal Favour, or new Bounties granted, which the People could not juſtly challenge, or had not a Right unto before; For the Lord *Cook*, at divers places, aſſerts, and all Lawyers know, that this Charter is, for the moſt part, only *Declaratory* of the principal Grounds of the Fundamental Laws and Liberties of *England*; no new Freedom is hereby granted, but a Reſtitution of ſuch as lawfully they had before, and to free them of what had been uſurped and incroached upon them by any Power whatſoever; and therefore you may ſee this Charter often mentions *Sua Jura*, their Rights, and *Liberates ſuas*, their Liberties, which ſhews they had them before, and that the ſame now were confirmed.

As

As to the occasion of this Charter, it must be noted, that our Ancestors, the *Saxons*, had with a most equal Poize and Temperament, very wisely contriv'd their Government, and made excellent Provision for their Liberties, and to preserve the People from Oppression, and when *William* the *Norman* made himself Master of the Land, though he be commonly called the *Conqueror*, yet in truth he was not so, and I have known several Judges that would reprehend any Gentleman at the Bar, that casually gave him that Title; For though he killed *Harold* the Usurper, and routed his Army, yet he pretended a Right to the Kingdom, and was admitted by Compact, and did take an Oath to observe the *Laws and Customs*.

But the truth is, he did *not perform* that Oath so as he ought to have done; and his Successors, *William Rufus*, King *Stephen*, *Henry* the First, and *Richard* likewise, made frequent *Incroachments* upon the Liberties of their People, but especially King *John* made use of so many Illegal Devices to drain them of *Money*, that, wearied with intollerable Oppressions, they resolved to oblige the King to grant them their Liberties, and to promise the same should be observed, which King *John* did in *Running-mead* between *Staines* and *Windsor*, by two *Chartres*, one called *Charta Libertatum*, *The Charter of Liberties* (the Form of which you may read in *Math. Paris*, *Fol.* 246. and is in effect, the same with this here recited) the other the *Charter of the Forest*, Copies of which he sent into every County and commanded the Sheriffs, *&c.* to see them fulfilled.

But by ill Council he quickly after began to violate them as much as ever, whereupon Disturbances and great Miseries arose, both to himself and the Realm.

The Son and Successor of this King *John*, was *Henry* the Third, who in the 19th Year of his Reign, renewed and confirmed the said Charters, but within two Years after *Cancelled* them, by the pernicious Advice of his Favourites, and particularly *Hubert de Burgh*, whom he had made Lord Chief Justice; one that in former times had

had been a great Lover of his Country, and a well-deserving Patriot, as well as learned in the Laws, but now, to make *this* a step to his *Ambition* (which ever rideth without Reins) perswaded and humoured the King, that he might avoid the Charters of his Father King *John* by *Dureſſe*, and his own great Charter, and *Charta de Foreſta* alſo, for that he was *within Age*, when he granted the ſame; whereupon the King, in the eleventh Year of his Reign, being then of full Age, got one of the great Charters, and of the Forreſt, into his Hands; and by the Council principally of this *Hubert* his Chief Juſtice, at a Council holden at *Oxford*, unjuſtly *Cancelled both the ſaid Charters*, (notwithſtanding the ſaid *Hubert de Burgh* was the primier Witneſs of all the Temporal Lords to both the ſaid *Charters*) whereupon he became in high Favour with the King, inſomuch that he was ſoon after (*viz.* the 10th of *December*, in the thirteenth Year of that King) created (to the higheſt Dignity that in thoſe times a Subject had) to be an Earl, *viz.* of *Kent*. But ſoon after (for Flatterers and Humoriſts have no ſure Foundation) he fell into the King's heavy Indignation, and after many fearful and miſerable *Troubles*, he was juſtly, and according to Law, Sentenced by his Peers in an open Parliament, and juſtly *Degraded* of that Dignity which he unjuſtly had obtained by his Counſel, for Cancelling of *Magna Charta*, and *Charta de Foreſta*.

In this great *Charter*, all the Ancient *Liberties* and *Cuſtoms* of *London*, are confirmed and preſerved, which is likewiſe done by divers other Statutes, as 14 *Edw.* 3. *Chap.* 2, &c. The 13*th* Paragraph ſays,

NO FREE-MAN SHALL BE TAKEN, &c. which deſerves to be written in Letters of Gold, and I have often wondred the Words thereof are not Inſcribed in Capitals on all our *Courts of Judicature*, *Town-Halls*, and moſt publick Edifices; they are the *Elixir* of our Engliſh Freedoms, the Store-houſe of all our Liberties. And becauſe my Lord *Cook*, in the ſecond Part of his Inſtitutes, has many excellent Obſervations,

I shall here recite his very Words. This containeth nine several Branches.

1. *That no Man be taken or Imprisoned,* but *per Legem terræ,* that is, by the *Common-Law, Statute-Law,* or *Custom* of *England:* For these Words, *per Legem terræ,* being towards the end of this Chapter, do refer to all the precedent Matters in this Chapter; and this hath the first place, because the *Liberty of a Man's Person* is more precious to him, than all the rest that follow, and therefore it is great Reason that he should, by Law, be relieved therein, if he be wronged, as hereafter shall be shewed.

2. *No Man shall be disseised,* that is, put out of Seisin, or dispossessed of his Free-hold, that is, Lands or Livelihood, or of his Liberties or Free Customs, that is, of such Franchises and Freedoms, and Free Customs, as belong to him by his Free Birth-right, unless it be by the *lawful Judgment,* that is, *Verdict* of his Equals, (that is, of Men of his own Condition) or by the *Law of the Land,* that is, (to speak it once for all) by the due course and Process of Law.

3. *No Man shall be outlawed,* made an *Exlex,* put out of the Law, that is, deprived of the Benefit of the Law, unless he be outlawed according to the Law of the Land.

4. *No Man shall be Exiled* or Banished out of his Country, that is, *Nemo perdet patriam,* no Man shall *lose his Country,* unless he be Exiled according to the Law of the Land.

5. *No Man shall in any sort be destroyed,* (*Destruere id est quod prius structum & factum fuit penitus Evertere & Diruere,*) unless it be by the Verdict of his Equals, or according to the Law of the Land.

6. No Man shall be condemned at the King's Suit, either before the King in his Bench, where the Pleas are *Coram Rege* (and so are the Words, *Nec super eum ibimus,* to be understood) nor before any other Commissioner or Judge whatsoever, and so are the Words, *Nec super eum mittimus,* to be understood, but by the Judgment

Judgment of his Peers, that is, Equals, or according to the Law of the Land.

7. We ſhall ſell to no Man Juſtice or Right.

8. We ſhall deny to no Man Juſtice or Right.

9. We ſhall defer to no Man Juſtice or Right.

Each of theſe we ſhall briefly explain.

1. No Man *ſhall be taken* (that is) Reſtrained of Liberty, by Petition or Suggeſtion to the *King* or his *Council*, unleſs it be by Indictment, or Preſentment of good and lawful Men, where ſuch Deeds be done. This Branch, and divers other parts of this Act, have been notably explained and conſtrued by divers Acts of Parliament, ſeveral of which you will find recited hereafter in this Book.

2. *No Man ſhall be Diſſeiſed*, &c. Hereby is intended, that Lands, Tenements, Goods and Chattels, ſhall not be ſeized into the King's Hands, contrary to this great Charter, and the Law of the Land; nor any Man ſhall be diſſeiſed of his Lands or Tenements, or diſpoſſeſſed of his Goods or Chattels, contrary to the Law of the Land.

A Cuſtom was alledged in the Town of *C.* that if the Tenant ceaſe by two Years, that the Lord ſhould enter into the Freehold of the Tenement, and hold the ſame until he were ſatisfied of the Arrearages: It was adjudged a Cuſtom againſt the Law of the Land, to enter into a Man's Freehold in that caſe, without Action or Anſwer.

King *Henry* VI. granted to the Corporation of *Diers* within *London*, power to ſearch, *&c.* And if they found any Cloth died with *Log wood*, that the Cloth ſhould be Forfeit: And it was adjudged, that this Charter concerning the Forfeiture, was againſt the Law of the Land, and this Statute; For no Forfeiture can grow by Letters Patents.

No Man ought to be put from his Livelihood without Anſwer.

3. *No Man Outlawed.*] That is, barred to have the Benefit of the Law. And note, to this Word *Outlawed*, theſe

these Words, *Unless by the Law of the Land*, do refer. [*Of his Liberties.*] This Word hath three Significations:

1. As it hath been said, it signifieth the Laws of the Realm, in which respect this Charter is called *Charta Libertatum*, as aforesaid.

2. It signifieth the *Freedom the Subjects* of *England* have: For Example, The *Company* of *Merchant-Taylors* of *England*, having power, by their *Charter*, to make Ordinances, made an Ordinance, that every Brother of the same Society, should put the one half of his *Cloaths* to be dressed by some *Cloath-Workers* Free of the same *Company*, upon pain to Forfeit 10 *s.* &c. And it was adjudged, that this Ordinance was against Law, because it was against the Liberty of the Subject, for every Subject, hath freedom to put his *Cloaths* to be dressed by whom he will, *& sic desimilibus*. And so it is, if such or the like Grant had been made by his Letters Patents.

3. *Liberties* signifie the *Franchises* and *Priviledges* which the Subjects have of the Gift of the King, as the *Goods* and *Chattels* of *Felons*, *Out-laws* and the like; or which the Subject claims by Prescription, as *Wreek*, *Waife*, *Stray*, and the like.

So likewise, and for the same reason, if a Grant be made to any Man, to have the Sole making of *Cards*, or the Sole dealing with any other Trade, that Grant is against the Liberty and Freedom of the Subject, that before did or lawfully might have used that Trade, and consequently against this great *Charter*.

Generally *all Monopolies* are against this great *Charter*, because they are against the Liberty and Freedom of the Subject, and against the Law of the Land.

4. *No Man Exiled*, that is, Banish'd, or forced to depart or stay out of *England* without his consent. By the Law of the Land, no Man can be *Exiled* or Banished out of his Native Country, but either by Authority of Parliament, or in case of Abjuration for Felony by the Common-Law; and so when our Books, or any Record, speak of *Exile*, or Banishment, other than in case of

of Abjuration, it is to be intended to be done by Authority of Parliament, as *Belknap* and other Judges, *&c.* Baniſhed into *Ireland*, in the Reign of *Richard* the Second.

This is a Beneficial Law, and is conſtrued benignly; And therefore the King cannot ſend any Subject of *England* againſt his Will, to ſerve him out of this Realm, for that ſhould be an Exile, and he ſhould *perdere Patriam:* No, he cannot be ſent againſt his Will into *Ireland* to ſerve the King or his Deputy there, becauſe it is out of the Realm of *England:* For if the King might ſend him out of his Realm to any place, then, under pretence of Service, as Ambaſſador or the like, he might ſend him into the fartheſt part of the World, which being an Exile, is prohibited by this Act.

5. *No Man deſtroyed*, that is, fore-judged of Life or Limb, or put to Torture, or Death, every Oppreſſion againſt Law, by colour of any uſurped Authority, is a kind of Deſtruction. And the Words *Aliquo modo* (any otherwiſe) are added to this Verb *deſtroyed*, and to no other Verb in this Chapter, and therefore all things, by any manner of means, tending to Deſtruction, are prohibited; as if a Man be accuſed or Indicted of Treaſon or Felony, his Lands or Goods cannot be granted to any, no not ſo much as by Promiſe, nor any of his Lands or Goods ſeized into the King's Hands before he is Attainted; For, when a Subject obtaineth a Promiſe of the Forfeiture, many times undue means, and more violent Proſecution is uſed for private Lucre, tending to Deſtruction, than the quiet and juſt Proceeding of the Law would permit, and the Party ought to live of his own until Attainder.

6. *By lawful Judgment of his Peers,*] That is, by his *Equals*, Men of his own Rank and Condition. The general Diviſion of Perſons, by the Law of *England*, is, either *one that is Noble*, and in reſpect of his Nobility of the Lords Houſe of Parliament, or *one of the Commons*, and in reſpect thereof, of the Houſe of Commons in Parliament. And as there be divers degrees of Nobility, as Dukes, Marqueſſes, Earls, Viſcounts and

and Barons, and yet all of them are comprehended under this Word *Peers*, and are Peers of the Realm: So of the Commons, there be Knights, Eſquires, Gentlemen, Citizens, and Yeomen, and yet all of them of the Commons of the Realm. And as every of the Nobles is one a Peer to another, though he be of a ſeveral Degree, ſo it is of the Commons; and as it hath been ſaid of Men, ſo doth it hold of Noble Women, either by Birth or Marriage.

And foraſmuch, as this Judgment by Peers is called *Lawful*, it ſhews the Antiquity of this manner of Trial: is was the ancient, accuſtomed Legal Courſe, long before this Charter.

Or by the Law of the Land.] That is, by due Proceſs of Law, for ſo the Words are expreſly expounded by the Statue of 37 *Edw.* 3. *Chap.* 18. And theſe Words are ſpecially to be referred to thoſe foregoing, to whom they relate. As none ſhall be condemned without a lawful Trial by his Peers, ſo none ſhall be taken, Impriſoned, or put out of his Free-hold, without due Proceſs of the Law, that is, by the Indictment or Preſentment of good and lawful Men of the Place, in due manner, or by Writ Original of the Common-Law.

Now, ſeeing that no Man can be taken, Arreſted, Attached, or Impriſoned, but by due Proceſs of Law, and according to the Law of the Land, theſe concluſions hereupon do follow.

1. That the Perſon or Perſons which commit any, muſt have lawful Authority.

2. It is neceſſary that the Warrant, or *Mittimus*, be lawful, and that muſt be in Writing under his Hand and Seal.

3. The Cauſe muſt be contained in the Warrant, as for Treaſon, Felony, *&c.* Suſpicion of Treaſon, or Felony, or the like particular Crime; For if it do not thus ſpecifie the Cauſe, if the Priſoner bring his *Habeas Corpus*, he muſt be diſcharged, becauſe no Crime appears on the Return; Nor is it in ſuch caſe, any Offence at all, if the Priſoner make his eſcape; whereas

if

if the *Mittimus* contain the *Cause*, the escape would respectively be Treason or Felony, though in Truth he were not guilty of the first Offence. And this mentioning the *Cause*, is agreeable to Scripture, *Acts 25. Vult.*

4. The Warrant, or *Mittimus*, containing a lawful *Cause*, ought to have a lawful *Conclusion*, &c. And him safely to keep until he be delivered by Law, *&c.* and not until the Party committing shall farther order.

If any Man, by colour of any Authority, where he hath not any in that particular case, shall presume to Arrest or Imprison any Man, or cause him to be Arrested or Imprisoned, this is against this Act, and it is most hateful, when it is done by countenance of Justice. King *Edward* VI. did incorporate the Town of St. *Albans*, and granted to them to make Ordinances, *&c.* they made a By-Law upon pain of Imprisonment, and it was adjudged to be against this Statute of *Magna Charta*: so it had been, if such an Ordinance had been contained in the Patient it self.

We will sell to no Man, deny to no Men, &c.] This is spoken in the Person of the King, who in Judgment of Law, in all his Courts of Justice is present: And therefore every Subject of this Realm, for Injury done to him, *in Bonis, Terris, vel Persona*, in Person, Lands, or Goods, by any other Subject, *Ecclesiastical or Temporal*, whatever he be, without Exception, may take his Remedy by the Course of the Law, and have Justice and Right for the Injury done him, *Freely*, without Sale, *Fully*, without Denial; and *Speedily*, without delay: for Justice must have three Qualities, it must be *Libera*, free; for nothing is more Odious than Justice set to sale: *Plena*, *Full*, for Justice ought not to limp, or be granted by Peace meal: And *Celeris*, speedy: *Quia Dilatio est quædam negatio*, Delay is a kind of Denial: And when all these meet, it is both Justice and Right.

We will not deny nor delay any Man, &c.] These words have been excellently expounded by latter Acts of Parliament, that by no means common Right, or common Law, should be disturbed or delayed; no, tho' it be con-

ommanded under the *Great Seal, or Privy Seal, Order, Writ, Letters, Message, or Commandment whatsoever, from the King or any other*; and that the Justices shall proceed, as if no such Writs, Letters, Order, Message, or other Commandment were come to them: All our Judges Swear to this; for 'tis part of their Oaths; so that if any shall be found Wresting the Law, to serve a Court-turn, they are Perjur'd as well as Unjust. The Common-Laws of the Realm should by no means be delayed, for the Law is the surest Sanctuary that a Man can take, and the strongest Fortress to protect the Weakest of all; *Lex est tutissima Cassis*, the Law is a most safe Head-piece, and *sub Clypeo legis Nemo decipitur*, no Man is deceived whilst the Law is his Buckler: But the King may stay his own Suit, as a *Capias pro fine*, for the King may Respite his Fine, and the like.

All Protections that are not legal, which appear not in the Register, nor warranted in our Books, are expresly against this Branch, *nulli differemus*, we will not delay any Man: As a Protection under the Great Seal, granted to any Man, directed to the Sheriffs, *&c.* and commanding them that they shall not Arrest him, during a certain time, at any other Man's Suit, which hath words in it, *Per Prærogativam, nostram quam nolumus esse Arguendam: By our Prerogative, which we will not have disputed:* Yet such Protections have been argued by the Judges, according to their Oath and Duty, and adjudged to be avoid. As *Mich.* 11. *H.* 7. *Rot.* 124. a Protection granted to *Holmes* a Vintner of *London*, his Factors, Servants and Deputies. *&c.* Resolved to be against Law, *Pasch.* 7. *H.* 8. *Rot.* 66. such a Protection disallowed, and the Sheriff amerced for not executing the Writ, *Mich.* 13. and 14. *Eliz.* in *Hitchcok's* Case, and many other of latter time: And there is a notable Record of Antient time, in 22. *E.* 1. *John de Marshal's* Case; *Non pertinent ad Vicecomitem de protectione Regis Judicare, imo ad Curiam.*

Justice or Right.] We shall not sell, deny or delay, Justice and Right; neither the *End*, which is *Justice*; nor

nor the *Mean* whereby we may attain to the End, and that is the *Law*: Right is taken here for *Law*, in the ſame ſence that Juſtice often is ſo called. 1. Becauſe it is the *Right Line*, whereby Juſtice diſtributive is guided and directed; and therefore all the Commiſſioners of *Oyer* and *Terminer*, of Goal-delivery, of the Peace, *&c.* have this Clauſe, *Facturi quod ad Juſtitiam pertinet, ſecundem Legem & Conſuetudinem Angliæ*; that is, to do *Juſtice* and *Right*, according to the Rule of the Law and Cuſtom of *England*: And that which is called Common-Right, in 2 *E.* 3. is called Common-Law, in 14 *E.* 3. *&c.* and in this ſence it is taken, where it is ſaid, *Ita quod ſtat Rectus in Curia, id eſt Legi in Curia.*

2. The Law is called *Rectum*, becauſe it diſcovereth that which is Tort, Crooked or Wrong; for as Right ſignifieth Law, ſo Tort, Crooked or Wrong, ſignifieth Injuries; and *Injuria eſt contra Jus*, Injury is againſt Right: *Recta Linea eſt Index ſui & obliqui*, a Right Line is both *declaratory of it ſelf and the Oblique.* Hereby the Crooked Cord of that which is called Diſcretion, appeareth to be unlawful, unleſs you take it as it ought to be, *Diſcretio eſt diſcernere per Legem, quid ſit Juſtum*, Diſcretion is to diſcern by the Law what is Juſt.

3. It is called *Right*, becauſe it is the beſt *Birth right* the Subject hath, for thereby his Goods, Lands, Wife and Children, his Body, Life, Honour and Eſtimation, are protected from Injury and Wrong: *Major Hæreditas venit unicuique noſtrum a Jure & Legibus, quam a Parentibus*: A greater Inheritance deſcends to us from the Laws, than from our Progenitors.

Thus far the very words of that Oracle of our Law, the Sage and Learned *Coke*, which ſo fully and excellently explains this incomparable Law, that it will be ſuperfluous to add any thing farther thereunto.

A Confirmation of the Charters of the Liberties of *England*, and of the Foreſt, made in the 35th Year of *Edward I.*

EDward, *by the Grace of God, King of* England, *Lord of* Ireland, *and Duke of* Guyan, *to all thoſe theſe preſent Letters ſhall hear or ſee, Greeting. Know ye, that we, to the Honour of God, and of Holy Church, and to the Profit of our Realm, have Granted, for us and our Heirs, that the Charters of Liberties, and the Charter of the Foreſt, which were made by common Aſſent of all the Realm, in the time of King* Henry *our Father, ſhall be kept in every Point without Breach. And we will, that the ſame Charter ſhall be ſent under our Seal, as well to our Juſtices of the Foreſt, as to others, and to all Sheriffs of Shires, and to all other Officers, and to all our Cities throughout the Realm, together with our Writs, in the which it ſhall be contained, that they cauſe the aforeſaid Charter to be publiſhed, and to declare to the People that we have confirmed them in all Points. And that our Juſticers, Sheriffs, Mayors, and other Miniſters, which under us have the Laws of our Land to guide, ſhall allow the ſame Charters pleaded before them in Judgment in all their Points, that is,* to wit, *the Great Charter as the Common Law, and the Charter of the Foreſt, for the Wealth of our Realm.*

Chap. 2. *And we Will, that if any Judgment be given from henceforth, contrary to the Points of the Charters aforeſaid, by the Juſticers, or by any other our Miniſters that hold Plea before them, againſt the Points of the Charters, it ſhall be undone, and holden for nought.*

Chap. 3. *And we Will, that the ſame Charters ſhall be ſent under our Seal, to Cathedral Churches throughout our Realm, there to Remain, and ſhall be read before the People two times by the Year.*

Chap. 4. *And that all Archbiſhops, and Biſhops, ſhall pronounce the Sentence of Excommunication againſt all thoſe, that by Word, Deed, or Council, do contrary to the foreſaid Charters,*

Charters, or that in any Point, break or undo them. And that the said Curses be twice a Year denounced and published by the Prelates aforesaid. And if the same Prelates, or any of them, be Remiss in the Denunciation of the said Sentences, the Archbishop of Canterbury *and* York, *for the time being, shall compel and distrain them to the Execution of their Duties in Form aforesaid.*

Chap. 5. *And for so much as divers People of our Realm, are in fear, that the Aids and Tasks which they have given to us beforetime, towards our Wars, and other Businesses of their own Grant, or good Will, (however they were made) might turn to Bondage to them and their Heirs, because they might be at another time found in the Rolls, and likewise for the Prizes taken throughout the Realm by our Ministers: We have granted for us and our Heirs, that we shall not draw no such Aids, Tasks, nor Prices into a Custom, for any thing hath been done heretofore, be it by Roll, or any other Precedent that may be founden.*

Chap. 6. *Moreover, We have granted for us and our Heirs, as well to Archbishops, Bishops,* &c. *as also to Earls, Barons, and to all the Commonalty of the Land, that for no business from henceforth, we shall take such manner of Aids, Tasks, or Prices, but by the common Assent of the Realm, and for the common Profit thereof; saving the Ancient Aids and Prices due and accustomed.*

Chap. 7. *And for so much, as the more part of the Commonalty of the Realm, find themselves sore grieved with the Maletot of Wools, that is,* to wit, *a Toll of Forty Shillings for every Sack of Wool, and have made Petition to us for to Release the same: We, at their Request, have clearly Released it; and have granted for us and our Heirs, that we shall not take such things, without their common Consent and good Will, saving to Us and our Heirs the Custom of Woolls, Skins and Leather, granted before by the Commonality aforesaid. In Witness of which things we have caused our Letters to be Patent. Witness* Edward *our Son,* London, *the Tenth of* October, *and the Twentififth Year of our Reign.*

Senten-

Sententia lata super Chartas.

The Sentence of the Clergy, against the Breakers of the Articles above-written.

IN the Name of the Father, the Son, and the Holy Ghoſt, Amen. Whereas our Soveraign Lord the King, to the Honour of God, and of Holy Church, and for the common Profit of the Realm, hath granted for him and his Heirs for ever, theſe Articles above-written; Robert Archbiſhop of Canterbury, Primate of all England, admoniſhed all his Province, once, twice and thrice; Becauſe that ſhortneſs will not ſuffer ſo much delay, as to give knowledge to all the People of England of theſe preſents in Writing, We therefore enjoyn all Perſons, of what Eſtate ſoever they be, that they and every of them, as much as in them is, ſhall uphold and maintain theſe Articles granted to our Sovereign Lord the King, in all points. And all thoſe that in any Point do reſiſt or break, or in any manner hereafter procure Counſel, or any ways Aſſent to reſiſt or break thoſe Ordinances, or go about it, by Word or Deed, openly or privily, by any manner of Pretence or Colour: We the foreſaid Archbiſhop, by our Authority in this Writing expreſſed, do Excommunicate and Accurſe, and from the Body of our Lord Jeſus Chriſt, and from all the Company of Heaven, and from all the Sacraments of Holy Church, do Sequeſter and Exclude.

NOTES.

It may be Obſerved, that this Curſe is left out of our late Printed Statute-book, though inſerted at large in that Printed in three Volumes, in Queen Elizabeth's *days, Anno* 1557. *There is likewiſe another like dreadful, but more full and expreſs Curſe, Solemnly pronounced before, in the time of King* Henry *III. which being alſo omitted in our Modern Statute-book, I ſhall add here for the Reader's ſatisfaction.*

The Sentence, or Curſe, given by the Biſhops, againſt the Breakers of the Great Charter.

IN the Year of our Lord, One thouſand two hundred and fifty three, the Third day of May, in the great Hall of the King at Weſtminſter, in the Preſence, and by the Aſſent of the Lord Henry, by the Grace of God, King of England, and the Lord Richard Earl of Cornwal his Brother, Roger Bigot Earl of

Norfolk and Suffolk, Marshal of England, Humfrey Earl of Hereford, Henry Earl of Oxford, John Earl Warren, and other Estates of the Realm of England: William Bonitace, by the Mercy of God, Archbishop of Canterbury, Primate of England, F. of London, H. of Ely, S. of Worcester, E. of Lincoln, W. of Norwich, G. of Hereford, W. of Salisbury, W. of Durham, R. of Exeter, M. of Carlisle, W. of Bath, E. of Rochester, T. of St. David's, Bishops apparelled in Pontificials, with Tapers burning, against the Breakers of the Churches Liberties, and of the Liberties or other Customs of the Realm of England, and namely, of these which are contained in the Charter of the Common Liberties of England, and Charter of the Forest, have denounced the Sentence of Excommunication in this Form. By the Authority of Almighty God the Father, the Son and the Holy Ghost, and of the Glorious Mother of God, and perpetual Virgin Mary, of the Blessed Apostles Peter and Paul, and of all Apostles, and of all Martyrs; of Blessed Edward, King of England, and of all the Saints of Heaven; We Excommunicate, Accurse, and from the benefits of our Holy Mother the Church, we Sequester, All those that hereafter willingly and maliciously deprive and spoil the Church of her Right: And all those that by any Craft or Wiliness do Violate, Break, Diminish, or Change the Churches Liberties, and free Customs contained in the Charters of the common Liberties, and of the Forest, granted by our Lord the King, to Archbishops, Bishops, and other Prelates of England; and likewise to the Earls, Barons, Knights, and other Freeholders of the Realm: And all that secretly or openly, by Deed, Word or Council, do make Statutes, or observe them being made, and that bring in Customs, or keep them when they be brought in, against the said Liberties, or any of them, the Writers, the Law-makers, Counsellors, and the Executioners of them, and all those that shall presume to judge against them. All and every which Persons before-mentioned, that wittingly shall commit any of the Premises, let them well know, that they incur the foresaid Sentence, ipso facto, [i. e. upon the Deed done.] And those that commit ought ignorantly, and be admonished, except they reform themselves within fifteen days after the time of their Admonition, and make full satisfaction for that they have done, at the will of the Ordinary, shall be from that time forth wrapped in the said Sentence; and with the same Sentence we burden all those that presume to disturb the Peace of our Sovereign Lord the King, and of the Realm. To the perpetual Memory of which thing, we the foresaid Prelates have put our Seals to these Presents.

So Zealous were our Ancestors to preserve their Liberties from Incroachments, that they employed all the strength of Humane Policy and Religious Obligations to secure them intire and inviolate. And since this Act is

still

ſtill in force, I cannot fathom the Reaſon why our Prelates ſhould not as well hold themſelves obliged twice a Year to accurſe the Infringers thereof: However we may note, that by this Statute, Chap. 2. *it is expreſly provided, that if any Judgment be given from that forwards againſt any of the points of* Magna Charta, *they ſhall be anull'd and holden for nought.*

A Statute made Anno 34. Edw. 1. *commonly called* de Tallageo non Concedendo.

CHAP. I.

The King, or his Heirs, ſhall have no Tallage or Aid without conſent of Parliament.

NO Tallage or Aid ſhall be taken or levyed by Us, or our Heirs, in our Realm, without the good Will and Aſſent of Archbiſhops, Biſhops, Earls, Barons, Knights, Burgeſſes, and other Freemen of the Land.

CHAP. II.

Nothing ſhall be purveyed to the King's Uſe, without the Owners Conſent.

NO Officer of ours, or of our Heirs, ſhall take Corn, Leather, Cattle, or any orher Goods of any manner of Perſon, without the good Will and Aſſent of the Party to whom the Goods belonged.

CHAP. III.

Nothing ſhall be taken of Sacks of Wool, by Colour of Maletot.

NOthing from henceforth ſhall be taken of Sacks of Wool, by Colour or occaſion of Maletot.

CHAP. IV.

All Laws, Liberties, and Cuſtoms, confirmed.

WE Will and Grant, for Us, and our Heirs, That all Clerks and Lay-men of our Land, ſhall have their Laws, Liberties, and free Cuſtoms, as largely and wholly, as they have uſed to have the ſame at any time when they had them. (2.) And if any Statutes

have been made by Us and our Anceſtors, or any Cuſtoms brought in contrary to them, or any manner of Article contained in this preſent Charter: We Will and grant, that ſuch manner of Statutes and Cuſtoms ſhall be void and fruſtrate for evermore.

CHAP. V.

Pardon granted to certain Offenders.

MOreover we have Pardoned *Humphrey Bohun*, Earl of *Hereford* and *Eſſex*, Conſtable of *England*; *Roger* Earl of *Norfolk* and *Suffolk*, Marſhal of *England*, and other Earls, Barons, Knights, Eſquires, and namely, *John de Ferariis*, with all other being of their Fellowſhip, Confederacy, and Bond, and alſo of other that hold 20*l.* Land in our Realm, whether they hold of us in Chief, or of others, that were appointed at a day certain to paſs over with us into *Flanders*, the Rancour and Evil will borne againſt us, and all other Offences, if any they have committed againſt us, unto the making of this preſent Charter.

CHAP. VI.

The Curſe of the Church ſhall be pronounced againſt the Breakers of this Charter.

AND for the more Aſſurance of this thing, we will and grant, that all Archbiſhops and Biſhops for ever, ſhall read this preſent Charter in Cathedral Churches twice in the Year, and upon the Reading thereof in every of their Pariſh-Churches, ſhall openly Denounce accurſed all thoſe that willingly do procure to be done any thing contrary to the Tenour, Force and Effect of this preſent Charter, in any point and Article. In witneſs of which thing we have ſet our Seal to this preſent Charter, together with the Seals of the Archbiſhops, Biſhops, which voluntarily have Sworn, that as much as in them is, they ſhall obſerve the Tenour of this preſent Charter in all Cauſes and Articles, and ſhall extend their faithful Aid to the keeping thereof, *&c.*

The Comment.

THE word Tallage is derived from the *French*, word *Tailler*, to ſhare or cut out a-part, and is Metaphorically

phorically used for any Charge, when the King, or any other, does cut out, or take away, any part, or share, out of a Man's Estate, and being a general word, it includes all Subsidies, Taxes, Tenths, Aids, Impositions, or other Charges whatsoever.

The word *Maletot* signifies an Evil (that is, an unjust) Toll, Custom, Imposition, or Sum of Money.

The occasion of making this Statute was this; King *Edward* being Injured by the French King, resolves to make War against him, and in order thereunto requires of *Humphery le Bohun* Earl of *Hereford* and *Essex*, and Constable of *England*, and of *Roger Bigot* Earl of *Norfolk* and *Suffolk*, and Marshal of *England*; and of all the Earls, Knights, Esquires, and Freeholders of 20*l.* Land, whether they held of him in *Capite*, to contribute towards such his Expedition, that is, to go in Person, or find sufficient Men in their places in his Army; which the Constable and Marshal, and many of the Knights and Esquires, and especially this *John Ferres* taking part with them, and all the Freemen, stoutly denied, unless it were so ordained and determined by common consent in Parliament, according to Law. And, it seems the Contest grew so hot, that *Baker's* Chronicle, *Folio* 99. relates a strange Dialogue that passed between them, *viz.* That when the *Earl-Marshal* told the King, *That if his Majesty pleased to go in Person, he would then go with him, and march before him in the Van Guard, as by right of Inheritance he ought to do; but otherwise he would not stir.* The King told him plainly, He should go with any other, though he went not in Person. *I am not so bound,* (saith the Earl) *neither will I take that Journey without You.* The King swore, *By God, Sir Earl, you shall either go or Hang.* And *I Swear by the same Oath* (said the Earl) *I will neither go nor Hang.* And so the King was forc'd to dispatch his Expedition without them. And yet, (saith my Lord *Coke*) although the King had conceived a deep Displeasure against the Constable, Marshal, and others of the Nobility, Gentry and Commons of the Realm, for denying that which he had so much desired, yet, for that

they ſtood in defence of their Laws, Liberties, and Free Cuſtoms, the ſaid King *Edward* the Firſt, who, as Sir *William Herley*, Chief Juſtice of the Common Pleas, who lived in his time, and ſerved him, ſaid, in the time of King *Edward* the Third, was *the wiſeſt King that ever was*; did, after his return from beyond the Seas, not only conſent to this Statute, whereby all ſuch Tallages and Impoſitions are forbidden for the future, but alſo paſſes a Pardon to the ſaid Nobles &c. of all Rancor, Ill-will and Tranſgreſſions, *If any they have committed*; which laſt words were added, leſt by acceptance of a Pardon of Tranſgreſſion, they ſhould implicitly confeſs that they had Tranſgreſſed; ſo careful were the Lords and Commons in former times to preſerve the Ancient-Laws, Liberties and free Cuſtoms of their Country.

But note, theſe words, *Si quas fecerint*, *If any they have committed*, are left out in all the Printed Books of Statutes; but they are in this Statute recited by *Coke*, in his ſecond Book of Inſtitutes, *Fol.* 535. and ſpecially noted, which he would never have done, if it had not been ſo in the *Rolls*. And ſince 'tis probable there may be many more like *Omiſſions*, *Miſtakes* and *Falſifications* crept into the Prints, and for that the Record and not the Printed *Statute-book*; (varying from the *Records*) is *the Law*, It were to be wiſhed, that all the *Rolls of Acts of Parliament* were carefully, by ſome Perſons of Learning and Integrity, view'd and compar'd with the Prints, and notice taken of all ſuch Variations, and of Errors committed in the Tranſlations, and of any Statutes of a publick Import, if in force, that were never Printed, and the ſame to be made publick.

Anno 25. *Edw.* 3.

CHAP. II.

A Declaration what Offences ſhall be adjudged Treaſon.

WHereas divers Opinions have been before this time, in what Caſe Treaſon ſhall be ſaid, and in

in what not, (2.) The King, at the Requeſt of the Lords, and of the Commons, hath made a Declaration in the manner as hereafter followeth, that is to ſay, When a Man doth Compaſs or Imagine the Death of our Lady the Queen or of her eldeſt Son and Heir. (3.) Or if a Man do violate the King's Companion, or the Queen's eldeſt Daughter unmarried, or the Wife of the Queen's eldeſt Son and Heir. (4.) Or if a Man do Levy War againſt our Lady the Queen in her Realm, or be Adherent to the Queens Enemies in her Realm, giving them Aid and Comfort in the Realm, or elſe-where, and therefore be provably Attainted of open Deed by the People of their Condition. (5.) And if a Man Counterfeit the Queen's Great or Privy Seal, or her Money. (6.) And if a Man bring falſe Money into the Realm, Counterfeit to the Money of *England*, as the Money called *Luſhburgh*, or other, like to the ſaid Money of *England*, knowing the Money to be falſe, to Merchandiſe, or make Payment, in Deceit of our ſaid Lady the Queen, and of her People. (7.) And if a Man Slay the Chancellor Treaſurer, or the Queen's Juſtice of the one Bench or the other, Juſtices of *Eyre*, or Juſtices of Aſſize, and all other Juſtices Aſſigned to hear and Determine, being in their Places doing their Offices. (8:) And it is to be underſtood, that in the Caſes above rehearſed that ought to be adjudged Treaſon, which extends to our Lady the Queen, and of her Royal Majeſty. (9.) And of ſuch Treaſon the Forfeitures of the Eſcheats pertaineth to our Lady, as well of the Lands and Tenements holden of others, as of himſelf. (10.) And moreover, there is another manner of Treaſon, that is to ſay, when a Servant ſlayeth his Maſter, or a Wife her Husband, or when a Man, Secular or Religious, ſlayeth his Prelate, to whom he oweth Faith and Obedience, (11.) And of ſuch Treaſon the Eſcheats ought to pertain to every Lord of his own Fee. (12.) And becauſe that many other like Caſes of Treaſon may happen in time to come, which a Man cannot think nor declare at this preſent time: It is Accorded, That if any other Caſe

ſuppoſed Treaſon, which is not above ſpecified, doth happen before any Juſtices, the Juſtices ſhall tarry without any going to Judgment of the Treaſon, till the Cauſe be ſhewed and declared before the Queen and Parliament, whether it ought to be judged Treaſon or other Felony. (13) And if percaſe any Man of this Realm, Ride Armed covertly or ſecretly with Men of Arms, againſt any other to Slay him, or Rob him, or take him, or Retain him, till he hath made Fine and Ranſom for to have his Deliverance; it is not the mind of the Queen nor her Council, that in ſuch Caſe it ſhall be judged Treaſon, but ſhall be judged Felony or Treſpaſs, according as the Law of the Land of old time ued and according as the Caſe requireth. (14.) And if in ſuch Caſe, or other like, before this time any Juſtices have Judged Treaſon, and for this cauſe the *Lands* and Tenements have come into the Queen's Hands as Forfeit; the chief Lords of the Fee ſhall have the Eſcheats of the Tenements holden of them, whether that the ſame Tenements be in the Queen's Hands, or in others by Gift, or in other manner. (15.) Saving to our *Lady* the Queen the Year and the Waſte, and the Forfeitures of Chattles, which pertain to him in the caſes above-named. (16.) And that the Writs of *Scire Facias* be granted in ſuch Caſe againſt the *Land Tenants*, without other Original, and without allowing any Protection in the ſaid Suit. (17.) And that of the *Lands* which be in the Queen's Hands, Writs be granted to the Sheriffs of the Counties where the *Lands* be, to deliver them out of the Queen's Hands without delay.

The Comment.

TReaſon is derived from *Trahir*, which ſignifies Treacher uſly to betray: When it concerns the Government and the Publick, 'tis called *High Treaſon*, but againſt particular Perſons, as a Wife killing her Husband, a Servant his Maſter, &c. it is *Petty Treaſon.*

High

High Treason, in the Civil *Law*, is called *Crimen Læsæ Majestatis*, a *Crime wronging Majesty*, but in our Common-Law Latin, *Alta Proditio*, and in an Indictment for this Offence, the word *Proditore* must be in.

Before the making this Act, so *many things* were charged as *High Treason*, that no Man knew how to behave himself: Now by this Statute, the Particulars of that Grand Crime are reckoned up, and all others excluded, till declared by Parliament. And the settling of this Affair was esteemed of such Importance to the Publick-weal, that the Parliament wherein this Act passed, was called long after, *Benedictum Parliamentum*, *The Blessed Parliament.*

The substance of this Statute, is branched out by my Lord *Cook*, 3d part of *Instit.* Fol. 3. into six Heads, *viz.*

The first concerning Death, by compassing or imagining the Death of the King, Queen, or Prince, and declaring the same by some Overt-deed. By killing and murdering the Chancellor, Treasurer, Justices of either Bench, Justices in *Eyre*, Justice of Assize, Justices of *Oier* and *Terminer*, in their Places doing their Offices.

The second is to Violate, that is, to carnally know the Queen, the Queen's Eldest Daughter unmarried, the Prince's Wife.

The third is, Levying War against the Queen.

The fourth is, adhering to the Queen's Enemies, within the Realm or without, and declaring the same by some Overt-Act.

The fifth is Counterfeiting the Great, the Privy Seal, or the Queen's Coyn.

The sixth and last, by bringing into this Realm Counterfeit Money, to the likeness of the Queen's Coyn.

Now as to the particular Exposition of the several parts of this Statute:

1. *What a Man* doth compass *&c.* in the Original it is *Quant Home*, which extends to both Sexes; but one that is, *Non Compos Mentis*, or an Infant within the Age of Discretion, is not included; but all *Aliens* within the Realm of *England*, being thereby under the Queen's

Protection, and owing a local Allegiance, if they commit Treason, may be punish'd by this Act, but otherwise it is of an Enemy.

2. *To compass and Imagine*, Is to contrive, design or intend the Death of the Queen; but this must be declared by some Overt-Act. But declaring ay an open Act, a design to Depose or imprison the *Queen*, is an Overt-Act, to manifest the compassing her Death. For they that will depose their *Queen*, will not stick to Murder her, rather than fail of their end, and (as King *Charles* the First Excellently observed, and lamentably experienced) *There are commonly but few steps between Prisons and the Graves of Princes.*

3. By the word King is intended, 1. A King before his Coronation, as soon as ever the Crown descends upon him, for the Coronation is but a Ceremony. 2. A King *de Facto*, and not *de Jure*, is a King within this Act, and a Treason against him is punishable, tho' the Right Heir get the Crown. 3. A Titular King, as the Husband of the Queen, is not a King within this Act, but the Queen is, for the word King here includes both Sexes.

4. What is to be understood by *the King's Eldest Son and Heir within this Act?* I Answer, 1. A second Son, after the Death of the first Born, is within the Act, for he is the Eldest. Secondly, The Eldest Son of a Queen *Regnant*, is as well within the Statute, as of a King. Thirdly, The Collateral Heir Apparent, or Presumptive, is not within this Statute, *Roger Mortimer* Earl of *March*, was in *Anno Dom.* 1487. (11. *Rich.* 2.) proclaimed Heir Apparent. *Anno* 39. *Hen.* 6. *Richard* Duke of *York* was likewise declared Heir Apparent, and so was *John de la Poolen*, Earl of *Lincoln*, by *Richard* III. And *Henry* Marques of *Exeter*, by King *Henry* VIII. But none of these, or the like, are within the Purview of this Statute, saith my Lord *Coke*, 2 *Instit.* Fol. 9.

5. Note, Whereas in the Printed Statute Book, it is there said *Probably Attainted*, the same is a great Error; for the words of the Record are, *Et de eo*

PRO-

PROVABLEMENT Soit Attaint : And shall be thereof PROVABLY Attaint : And I cannot but admire that such a gross Mistake should be suffered, since my Lord *Coke* has so expressly observed the difference, in these words following, 3 *Instit.* Fol. 12. *In this Branch* (saith he) *four things are to be observed :* 1. *This word* [*Provablement*] *Provably, that is,* upon direct and manifest Proof, *not upon* Conjectural Presumptions, *or* Inferences, *or* strains of Wit, *but upon good and sufficient Proof. And herein the Adverb* [Provablement] Provably *hath a great force, and signifieth* a direct and plain Proof; *which word the Queen, the Lords, and Commons in Parliament did use, for that the Offence was hainous, and was so heavily and severely punished, as none other the like; and therefore the Offenders must* Provably *be Attainted, which words are as forcible,* as upon direct and manifest Proof. *Note, the word is not* [Probably] *for then* Commune Argumentum *might have served; but the word is* [Provably] *be Attainted. Secondly, This word* [Attain] *necessarily implieth that he be proceeded with, and Attainted according to the* due Course *and Proceedings of Law, and not by* Absolute Power, *or by other means, as in former times had been used. And therefore if a Man do adhere to the Enemies of the Queen, or be slain in open War against the Queen, or otherwise die before the Attainder of Treason,* he forfeiteth nothing, *because (as the Act saith) he is not* Attainted : *Wherein this Act hath Altered that, which before this Act, in Case of Treason, was taken for Law. And the Statute of* 31. Ed. 3. Cap. 12. *saves nothing to the Queen but that which was in* Esse, *and pertaining to the Queen at the making of that Act. And this appeareth by a Judgment in Parliament in Ann.* 29. H. 5. Cap. 2. *That* Jack Cade *being slain in open Rebellion, could no way be punished or forfeit any thing, and therefore was Attainted by that Act of High Treason.* Thirdly, *Of open Deed, per Apertum Factum,* these words strengthen the former Exposition of [*Provablement*] an Overt-Act must be alledged in every Indictment upon this Act, and proved. Compassing by bare words is not an Overt-Act, as appears by many Temporary Statutes against it. But there must

must be ſome open Act, which must be *manifeſtly proved.* As if divers do Conſpire the Death of the Queen, and the manner how, and thereupon provide *Weapons, Powder, Poiſon, Harneſs, ſend Letters,* and the like, for the Execution of the Conſpiracy. If a Man be Arraigned upon an Indictment of High Treaſon, and ſtand Mute [that is, refuſe to Plead] he is not to be Preſſed to Death, but ſhall have the ſame Judgment, and incur ſuch Forfeiture, as if he had been Convicted by Verdict or had confeſſed it. For this ſtandeth well with this word [*Provablement*] for *fatetur facinus qui judicium fugit.* But otherwiſe it is in caſe of Petit Treaſon, Murder, or other Felony. If a Subject Conſpire with a Foreign Prince, to Invade the Realm by open Hoſtility, and prepare for the ſame by ſome Overt-Act, this is a ſufficient Overt-Act for the Death of the Queen. Fourthly, The Compoſition and Connection of the words are to be obſerved, *viz.* [*Thereof be Attainted by open Deed.* That (as was reſolved by the Juſtices in *Eaſter* Term, 35 *Eliz.*) relateth to the ſeveral and diſtinct Treaſons before expreſſed, (and ſpecially to the *Compaſſing and Imagination of the Death of the Queen,* &c. for that is a ſecret in the Heart) and therefore one of them cannot be an Overt-Act for another; as for example: A Conſpiracy is had to Levy War, this (as hath been ſaid and reſolved) is no Treaſon by this Act, until it be levyed, therefore it is no Overt-Act, or manifeſt Proof of the Compaſſing the Death of the Queen within this Act; for the words are [*de eo,* &c. *thereof*] that is, of the Compaſſing of the Death. Divers latter Acts of Parliament have Ordained, That Compaſſing by bare Words or Sayings ſhould be Treaſon, but are all either Repealed, or Expired. And it was wont to be ſaid, bare Words may make an Heretick, but not a Traytor, without an Overt-Act. And the Wiſdom of the Makers of this Law would not make *Words only* to be Treaſon, ſeeing ſuch variance commonly among the Witneſſes is about the ſame, as few of them agree together. But if words be ſet down in Writing by the Delinquent himſelf, that is a ſufficient Overt-Act within this Statute. In

In the Preamble of the Statute of 1 *Mar.* (concerning the Repeal of certain Treaſons declared after this Statute of 25 *Edw.* 3. and before that time, and bringing back all things to the meaſures of this Sratute,) It is agreed by the whole Parliament, *That Laws juſtly made for the Preſervation of the Common wealth, without extream Puniſhment, are more often obeyed and kept, than Laws and Statutes made with great and extream Puniſhments. And in ſpecial ſuch Laws and Statutes ſo made, whereby not only the ignorant and rude unlearned People, but alſo learned and expert People, minding Honeſty, are oftentimes trapped and ſnared; yea, many times* for Words only, *without other Fact or Deed done or perpetrated.* Therefore this Act of 25 *Edw* 3. doth provide that there muſt be an Overt-Act. But words without any Overt-Act, are to be puniſh'd in another degree, as an high Miſpriſion.

By People of their Condition.] That is, *per pares*, by their Equals.

7. As to Treaſon, *by Levying War againſt the Queen*, we muſt note, that though Conſpiring or Compaſſing to Levy War, without a War *de Facto*, be no Treaſon, yet if many Conſpire a War, and only ſome few Actually Levy it, all are guilty of the Treaſon. Raiſing a Force to burn or throw down a particular Incloſure, is only a *Riot*, but if it had been to have gone from Town to Town to throw down all Incloſures, or to change Religion, or the like, it were Levying of War, becauſe the intended Miſchief is publick. Holding a Fort or Caſtle againſt the Queen's Forces, is Levying of War.

8. As touching the *Interpretative Treaſons* by Killing the Chancellor, Treaſurer, Juſtice of one or the other Bench, Juſtice in *Eyre*, or of *Aſſize*, or *Oyer* and *Terminer*. Note, 1. This extends but only to the Perſons here named; not to the Lord Steward, Conſtable, or Marſhal, or Lords of Parliament. Secondly, It extends to thoſe only during their Office. Thirdly, It extends only to Killing not Wounding, without Death.

But by the Statute 3 *H.* 7. *Cap.* 14. Compaſſing to Kill the Queen, or any of her Council, is made Felony.

9. Coun-

9. Counterfeiting the Great or Privy Seal, is Treason; but it must be an Actual Counterfeiting thereof, Compassing to do it is no Treason: Affixing the Great Seal by the Chancellor, without Warrant, is no Treason: Fixing a new Great Seal to another Patent, is a great *Misprision*, but no Treason, being not a Counterfeiting within this Act: But Aiders and Consenters are within this Act. The Counterfeiting of the Privy Signet, or Sign Manual, is no Treason within this Act, but made by the Statute, 1 *Marc.* c. 6.

10. Treason concerning Coyn, is Counterfeiting the Queen's Coyn; and this was Treason at Common-Law, and Judgment only as of Petit Treason: But Clipping, *&c.* being made Treason by subsequent Statutes, the Judgment is to be Drawn, Hang'd and Quarter'd. Money here extends only to the Proper Money of this Realm. But now by the 1 *M.* c. 6. Forging or Counterfeiting Money made Current by Proclamation, is High Treason, and by 14 *Eliz.* c. 3. Forging of Foreign Coin, not current here, is Misprision of Treason in the Forgers, their Aiders and Abbetors--And not that the bare Forging of the Queens Coyn, without Uttering, is Treason.

The second Offence concerning Money, here declared to be Treason, is If any Person *bring into this Realm Counterfeit Money*: Where note, 1. It must be Counterfeit. 2. Counterfeited to the similitude of English Money. 3. It must be brought from a Foreign Realm, and therefore not to *Ireland*. 4. It must be brought knowingly. 5. Brought, and not barely uttered here. But by the Statute *De Moneta*, if false or clip'd Money be found in any Person's hands, and he be suspitious, he may be Arrested till he can clear himself. 6. He must Merchandize therewith, that is, make Payment thereof.

11. As this Statute leaves all other doubtful Matters to be declared Treason in Parliament, but not to be punish'd as such till so declar'd. So in succeeding Reigns, abundance of other Matters were declared Treason, which being found very Grievous and Dange-

Dangerous, by the Statute of 1 *Mar.* Cap 1. it is Enacted, *That therefore no Act, Deed, or Offence, being by Act of Parliament, or Statute, made Treason, Petty Treason, or Misprision of Treason, by Words, Writing, Cyphering, Deeds, or otherwise however, shall be taken, had, Deemed or Adjudged to be High-Treason, Petty-Treason, or Misprision of Treason, but only such as be declared and expressed to be Treason, Petty-Treason, or Misprision of Treason, by this Statute of* 25 Edw. 3.

12. The Offences made High Treason by Statutes since this first of *Mary*, are as follow.

Refusing the Oath of *Supremacy* upon second Tender, is Treason, by 5 *Eliz.* Cap. 1. but no Corruption of Blood; so likewise is Extolling the Power of the Bishop of *Rome*, a *Premunire*, and the bringing in of *Bulls*, or putting them in Execution, or Reconciling to the Church of *Rome*, is Treason by the same Statute. Bringing in *Agnus Dei*'s is a Premunire, 23 *Eliz.* Cap. 1. Also absolving Subjects from their Obedience, of Reconciling them to the Obedience of *Rome*, is Treason, 27 *Eliz.* Cap. 2. So it is likewise for a Priest coming into *England*, not submitting in two days. The like for English Men in Foreign Seminaries.

Another Statute of King *Edward* the Third,

Anno 2 *Edw.* 3. *Cap.* 2.

In what Cases only *Pardon* of Felony shall be Granted, *&c.*

ITem, *Whereas Offenders have been greatly encouraged, because the Charters of* Pardon *have been so easily granted in times past of Man-slaughters, Robberies, Felonies, and other Trespasses against the Peace.* (2) *It is Ordained and Enacted, that such Charters* shall not be Granted, but only where the Queen may do it by her Oath, *that is to say, where a Man slays another in his own Defence, or by Misfortune.* (3) *And also they have been encouraged, because*

cause that the Justices of the Goal-Delivery, and of Oyer *and* Terminer *have been procured by great Men, against the Form of the Statute made in the 27th Year of the Reign of King* Edward, *Grandfather to our Lord the King, wherein it is contained, that Justices assigned to take Assizes, if they be Lay-Men, shall make deliverance; and if the one be a Clerk, and the other a Lay Man, that the Lay-Judge, with another of the Country associate to him, shall deliver the Goals.* (4) *Wherefore it is Enacted, That Justices shall not be made against the Form of the said Statute.* (5) *And that the Assizes, Attaints and Certifications, be taken before the Justices commonly Assigned, which should be good Men and Lawful, having knowledge of the Law, and none other, after the Form of another Statute made in the time of the said King* Edward *the First.* (6) *And that the* Oyers *and* Terminers *shall not be granted, but before the Justices of the one Bench or the other, or the Justices Errants; and that great Hurt, or horrible Trespasses, and of the King's special Grace, after the Form of the Statute thereof ordained in time of the said Grandfather, and none otherwise.*

The Comment.

Touching this Statute, and several others to the same purpose, as 14. *Edw.* 3. Cap. 14. and to *Edw.* 3. Cap. 2. and 13 *R.* 2. Cap. 1. and 16. *R.* Cap. 6. &c.

We shall only give you the words of *Coke* in the third part of his Inst. Fol. 236.

What things the Queen may pardon, and in what manner, and of what she cannot pardon, falleth now to be treated of.

IN case of death of Man, Robberies and Felonies against the Peace, divers Acts of Parliament have *Restrained the power of granting Charters of Pardons.* First, That no such Charters shall be granted, but in case *where the Queen may do it by her Oath.* Secondly, That no Man shall obtain *Charters out of Parliament*, Stat. 4. *Edw.* 3. Chap.

Chap. 13. And accordingly in a Parliament Roll it is ſaid, [for the Peace of the Land it would much help, if good Juſtices were appointed in every County, if ſuch as be let to Mainprize do put in good ſureties, as Eſquires or Gentlemen : And that *no Pardons were granted but by Parliament.*] Thirdly, For that the King hath granted Pardons of Felonies upon falſe Suggeſtions; it is provided, that every Charter of Felony, which ſhall be granted at the Suggeſtion of any, the name of him that maketh the Suggeſtion, ſhall be compriſed in the Charter; and if the Suggeſtion be found untrue, the Charter ſhall be diſallowed. And the like proviſion is to be made by the Statute of 5 *H.* 4. Cap. 2. for the Pardon of an Approver.

Fourthly, It is provided that no Charter of Pardon for Murder, Treaſon, or Rape, ſhall be allowed, *&c.* If they be not ſpecified in the ſame Charter, Statute 13 *R.* 2. Before this Statute of 13 *R.* 2. by the Pardon of *all Felonies*, Treaſon was pardoned, and ſo was Murder, *&c.* At this day, by the Pardon of all Felonies, the Death of Man is not pardoned. Theſe be excellent Laws for Direction, and for the Peace of the Realm. But it hath been conceived, (which we will not queſtion) that the Queen may diſpence with theſe Laws by a *Non Obſtante*, (notwithſtanding) be it General or Special (albeit we find not any ſuch Clauſes of *Non Obſtante*, notwithſtanding to diſpence with any of theſe Statutes (but of late times.) Theſe Statutes are excellent Inſtructions for a Religious and prudent Queen to follow, for in theſe Caſes, *Ut ſumme poteſtatis Regiæ eſt poſſe quantum velit, ſit Magnitudinis eſt velle quantum poſſit.* (As it is the higheſt *Kingly* power to be able to Act what he Wills; ſo it is his greatneſs and Nobleneſs to Will only what he lawfully can.) Hereof you may read more in Juſtice *Standford*, Lib. 2. Cap 32. in divers places of that Chapter, of his grave Advice on that behalf. Moſt certain it is, that the *Word of God* has ſet down this undiſputable General Rule, *Quia non profetur Cito Contra malos ſententia, filii hominum*

hominum ſine timore ullo perpetrant. (Becauſe Sentence againſt evil Men is not ſpeedily executed, therefore the Hearts of the Children of Men are ſet in them to do evil.) And thereupon the Rule of Law is grounded, *Spes Impunitatis Continuum Affectum tribuit delinquendi*, [the hope of Impunity encourageth Offenders.] *Et venie facilitas Incentivum eſt Delinquendi*, [and the Facility of obtaining Pardon, is an Incentive to commit Offences.] This is to be added that the Intention of the ſaid Act of 13 *R.* 2. was not that the *Queen* ſhould grant a *Pardon of Murder by expreſs Name*, for the cauſes aforeſaid; therefore that proviſion made, which was (as in other Caſes I have obſerved) grounded upon the Law of God, *Quincunque effuderit humanum ſanguinem, fundetur ſanguis illius; ad imaginem quippe Dei creatus eſt homo nec aliter Expiati poteſt, niſi per ejus ſanguinem, qui alterius ſanguinem effuderit.* [Whoſoever ſhall ſhed Man's Blood, by Man alſo ſhall his Blood be ſhed, becauſe Man was Created after the Image of God; neither can it be expiated otherwiſe than by his Blood, who ſpilt the Blood of another.] And the words of every Pardon, is after the Recital of the Offence, *Nos pietate moti*, &c. we being *moved with Piety*, &c But it can be no Piety, to violate an expreſs Law of God, by letting Murder ſcape unpuniſh'd. Thus *Coke*, whereby we ſee what Opinion he had of ſuch Pardons.

A brief Digreſſion concerning the Nature of APPEALS.

THIS Diſcourſe of Pardons, puts us in mind of another kind of Legal Proſecution, called an *Appeal*; of which it may be very convenient to give the Reader ſome brief account. You muſt know then, for ſeveral Offences, for which a Man deſerveth Death, and particularly for Murder, there are two ways to bring him to anſwer for the ſame, one by *Indictment*, which is at the *Queen*'s Suit, and the other by *Appeal*, which is at the Suit of a Party which is wronged or injured

injured by the Murder; as a Woman whose Husband, or a Child, or Brother, whose Father or Brother is killed.

Now upon an Indictment, if the Offender be found Guilty, because it is to be at the Suit of the *Queen*, it has been said by some, may be and too often, a Pardon has been obtained (though even that to be against Law, as appears by the Premisses.) But in an Appeal all agree, the *Queen* can grant no Pardon. Nay, if a Person be tried by an Indictment, and Acquitted, or Convicted, and get a Pardon, yet an Appeal may be brought, and if he be thereupon Convicted, notwithstanding such his former Acquital, or Pardon, he must be Hanged.

The word Appeal is derived from the French Verb *Appeller*, to Call, because he or she that brings it, Calls the Defendent to Judgment; but the meaning thereof is all one with an Accusation, and is peculiarly in legal signification applied to Appeals of Three sorts: First, an Appeal brought by an Heir Male, for some wrong done to his Ancestor, whose Heir he is. Secondly, Of wrong done to an Husband, and is by the Wife only, if it be for the Death of her Husband, to be Prosecuted. The third is. Of wrong done to the Appellants themselves, as for Robery, Rape, or Maim, *Coke* 1 Instit. Sect. 500.

Note, That this Appeal must be brought *within a year and a day* after the Murder is committed. For afterwards it cannot be brought at all. And Antiently it was customary not to bring an Indictment for the *Queen*, till after the year and the day, waiting in the mean time for the Prosecution of the Party; but this was found very inconvenient, for the Party was frequently compounded with, and at the years end the business was forgot, and so Offenders escaped Justice.

And therefore the same was altered by the Statute 3. *Hen.* 7. cap. 1. whereby it is Enacted, *That the Coroner shall do his Office and the Offenders may be arraigned at any time within the Year, at the Queen's Suit, but if Acquitted, yet the Party within the Year and day, should have*

liberty

liberty to bring in an Appeal against such Person, either Acquitted or Attainted, if the Benefit of the Clergy be not before thereof had. And in order thereunto that when any Person happened to be Acquitted for the Death of a Man, within the year, the Justices before whom he is Acquitted, shall not suffer him to go at large, but either to remit him again to the Prison, or else to let him to Bail after their Discretion, till that the day and the year be passed, that so he may be forthcoming to answer an Appeal, if it should happen to be brought.

Thus that Statute; as to the latter Clause whereof, you see the Judges have power, in case of Acquital to keep the Party in Prison still, till the day and year be over; or else to admit him to Bail; and though this be left to their Discretion, yet it must not be such a Discretion that confounds all Discretion; but they must weigh the Circumstances, and go according to Law and Judgment; and certainly the Law intended such Bail, if any be accepted, should be bound Body for Body, for otherwise it seems no Security. And therefore many wise Men wondered, when Count *Conningsmark* was Acquitted on the Indictment for the Barbarous Murder of Esquire *Thynn*, that he was suffered to go so soon abroad, for being a Stranger, he was never like to come again into *England*; and being so rich, what values he to discharge the Forfeitures of his Sureties Recognizances, which likewise may be easily compounded. At most, the Forfeiture is to the *Queen*, and what is that to the next Heir or Kinsman? He is by this means outed of his Legal Remedy to Revenge the Blood of his near and dear Relation---- *Sed hæc Obiter.*

The Form of an Appeal of Murder.

HIC Hic Instanter Appellat W. F. &c. (In English thus) **I here instantly Appeals W. F. of the Death of his Brother H. C. For that whereas the aforesaid H. was, in the Peace of God and the King, at Tonbridge in the County of Kent, the twentieth**

twenty eighth day of March, in the thirty fourth year of the Reign of our Lord Charles the Second, &c. at seven a Clock in the Evening of the same day, came the said W. F. as a Felon of our Lord the King, in a premeditated Assault, with Force and Arms, &c. And upon him the said H. C. then and there Feloniously an Assault did make, and with a certain Sword of the price of twelve pence, which he then and there in his Right Hand did hold, the aforesaid H. upon his Head didst strike, and one mortal Wound of two Inches long in the forepart of his Head, even unto the Brain to the said H. did then and there Feloniously give; of which said Wound the said H. for three days then next following did Languish, and then, viz. the [such a day] day of [such a Month] he there died, [or if the case be so, Instantly died.] And so the said W. H. as a Felon of our Lord the King, the aforesaid H. Feloniously did Kill and Murther against the Peace of our said Lord the King, his Crown and Dignity: And that he did wickedly, and as a Felon, against the Peace of God, and our Lord the King, the aforesaid

offers that the same be detained as the Court of our Lord the King shall think meet. Diversity of Courts and Jurisdictions, Written in the time of King *Henry* VIII.

1. Note, That a Woman cannot now bring an Appeal for the Death of any other Ancestors, being barred therefrom by *Magna Charta*, Cap. 34. whereas (as you have heard) it is provided, that none shall be taken or Imprisoned upon the Appeal of any Woman, for the Death of any Person, but only of her Husband. But she may at this day bring an Appeal for Robbery, &c. for therein she is not by that Statute restrained. *Coke 2. Instit.* Fol. 68.

2. The Woman that brings an Appeal for the Death of her Husband, must be his Wife, not only *de Facto* but *de Jure*, not only called and reputed, or cohabiting

ing with him, but actually and legally Married to him; and of such a Wife the ancient Law-book speaks, *De morte viri Inter Brachia sua Interfecti*; the Husband is killed within her Arms, that is, whilst he was legally in her Possession; but that the Appellant and the Person killed, were not ever lawfully coupled in Matrimony, is a good Plea in an Appeal.

3. This right of Appeal for the Death of her Husband, is annexed to her Widow-hood, as her *Quarantine* is, and therefore, if the Wife of the Dead Marry again, her Appeal is gone, even although the second Husband should dye within the year and day after the Murder of the first: For she must, all the while before the Appeal be brought, continue *Famini viri sui*, his Widow upon whose Death the Appeal is brought. Furthermore, If she bring the Appeal during her Widow-hood, and take a Husband whilst it is depending, the Appeal shall abate, (that is, be out of doors) for ever. Nay, if on her Appeal she hath Judgment against the Defendant, if afterward she take an Husband before the Defendant be Hanged, she can never have Execution of Death against him.

4. By the Statute of *Gloceſt.* made in the sixth year of King *Edward* I. Cap. 9. it is Enacted, That if an Appeal set forth the Deed, the Year, the Day, the Hour, the Reign of the *Queen*, and the Town where the Deed was done, and with what weapon the Party was slain, the Appeal shall stand in effect, and shall not be abated for default of fresh Suit, if the Party shall Sue within the Year and the day after the Deed done.

5. As for *the year and day* here mentioned, it is to be accounted for the whole year according to the Calendar, and not for twelve Months, as twenty eight days to the Month. So likewise the day intended is a natural day; and this Year and day must be accounted after the Felony and Murder committed. Now if a Man be Mortally Wounded on the first day of *May*, and thereof Languishes to the first day of *June*, and then dies; the question here arises, Whether the year and the day allowed for bringing the appeal, is to be reckoned

reckoned from the giving the Wound, or the time of Death. Some have held the former: For that the Death enſuing, hath relation to it, and that is the Cauſe of the Death, and the Offender did nothing the day of the Death. But the truth is, the year and day ſhall be accounted only from the firſt of *June*, the Day of the Death; For before that time no Felony was committed. And thus it hath often been reſolved and adjudged, and the reaſon aboveſaid grounded upon Relation (which is a Fiction in Law) holdeth not in this Caſe. *Coke* 2. *Inſtit.* Fol. 320.

6. If an Appeal of Murder be brought, and depending the Suit, and after the Year and Day is elapſed, one become Acceſſary to the Murder, the Plaintiff ſhall have an Appeal againſt him after the Year and Day paſt after the Death, but it muſt be brought within the Year and Day after this new Felony as Acceſſary.

7. If a Man be Indicted for Murder, and Convicted only of Man ſlaughter, and have the Benefit of his Clergy, it ſeems the Wife and Heir cannot afterwards bring their Appeal. Touching which the Lord *Coke*, 3 *Inſtit.* Fol. 131. cites a Caſe in theſe words: Thomas Burghe, *Brother and Heir of* Henry Burghe, *brought an Appeal of Murder againſt* Thomas Holcroft, *of the Death of the ſaid* Henry, *The Defendant pleaded, that before the Coroner, he was Indicted of Man-ſlaughter, and before Commiſſioners of* Oyer *and* Terminer, *he was upon that Indictment Arraigned, and confeſſed the Indictment, and prayed his Clergy, and thereupon was entred* Curia adviſare vult, *the Court will conſider; whereupon he demanded Judgment, whether the Plaintiff ought to maintain that Appeal he had brought. To which the Plaintiff demurred in Law. And in this Caſe three Points were adjudged by Sir* Chriſtopher Wray, *Sir* Thomas Gawdy, *and the whole Court.*

Firſt, *That the Matter of the Bar, had been a good Bar of the Appeal by the Common-Law, as well as if the Clergy had been allowed: For that the Defendant, upon his Confeſſion of the Indictment, had prayed his Clergy, which the Court ought to have granted, and the deferring of the* Court *to be adviſed, ought*

ought not to prejudice the Party Defendant, albeit the Appeal was commenced before the Allowance of it.

The ſecond Point adjudged was, *That this* Caſe *was out of the Statute of* 3 Hen. 7. *for that the words of the Act are,*

If it fortune, that the ſame Felons and Murderers, and Acceſſaries ſo Arraigned, or any of them, to be Acquitted, or the Principal of the ſaid Felony, or any of them to be Attainted, the Wife or next Heir of him ſo ſlain, *&c.* may have their Appeal of the ſame De th and Murder againſt the Perſon ſo Acquitted, or againſt the ſaid Principals ſo Attainted, if they be alive, and that THE BENEFIT OF HIS CLERGY THEREOF be not had.

And in this the Defendant Holcroft *was neither Acquitted nor Attainted, but Convicted by Confeſſion, and the* Benefit of the Clergy only praved, *as is aforeſaid, ſo as the Statute being penal concerning the Life of Man and made in Reſtraint of the* Common-Law *was not to be taken by Equity, but as* Caſus Omiſſus, *a Caſe Omitted, and left in the* Common-Law.

As to the Third, it was objected, That every Plea ought to have an apt Concluſion and that the Concluſion in this Caſe ought to have been, Et petit judicium ſi præditt *Thomas Holcroft* iterum de eadem morte, de qua ſemel Convictus fuit, Reſpondere compelli debeat. *And he does ask Judgment, if the above-mentioned* Thomas Holcroft *ſhall be obliged to anſwer again for the ſame Death he was once convicted of: But it was adjudged, that either of both Concluſions was ſufficient in Law: And therefore that Exception was diſallowed by the Rule of the* Court.

Note, The ancient Law was, that when a Man had Judgment to be hanged in an Appeal of Death, that *the Wife and all the Blood of the Party ſlain, ſhould draw the Defendant to Execution.* And *Gaſcoine* ſaid, *Iſſint fuit in diebus noſtris,* So it was done in our Days.

And thus much occaſionally about *Appeals*, which we the rather inſerted, becauſe the Practice thereof (through I know not whoſe Negligence, has been almoſt loſt or forgot, till ſome few Years ago, a Woman

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in *Southwark* revived it against one that killed her Husband, and got a Pardon for it, but she Prosecuted him on Appeal, had Judgment against him, and he was Executed; since which time the same Course has been frequently talk'd of, and brought, but for the most part (to the Shame, I think, of those Women or Children, who make such Compositions for their Husbands or Fathers Blood) they have been by some secret Bargains or Compensations hush'd up, and seldom effectually followed.

A DIGRESSION touching the Antiquity, Use, and Power of PARLIAMENTS, and the Qualifications of such Gentlemen as are fit to be chosen the Peoples Representatives.

THE Recital of these several Laws for frequent calling of Parliaments, declaring the same to be of such Importance, or Necessity, to the Safety and Well-being of the Nation, invites us to give the vulgar Reader some farther Information touching those most Honourable Assemblies, which, though a Digression, will, I hope, be no Transgression, for I am willing at any time to go a little out of my way, provided I may thereby meet with the Reader's Profit and Advantage.

Of the Names and Antiquity of Parliaments.

THE word PARLIAMENT is *French*, derived from the three words *Parler la ment*, to speak ones mind, because every Member of that Court should sincerely and discreetly speak his mind, for the general good of the Common-Wealth; and this Name (saith *Coke*, 1 *Instit.* Fol. 100.) was used before *William* the Conqueror, even in the time of *Edward* the Confessor. But most commonly in the *Saxons* time, it was

called *Michegemote* or *Witenage-Mote*, that is, the *Great Mote* [*Meeting* or *Assembly*, whence our *Ward-Moots* in *London* receive their name to this day] or the *Wise Mote*, that is, the Assembly of the wise Men and Sages of the Land.

But this word Parliament is used in a double sense.

1. *Strictly*, as it includes the Legislative Power of *England*, as when we say--- *An Act of Parliament*: And in this Acceptation it necessarily includes the Queen, the Lords, and the Commons, each of which have a *Negative Voice* in making Laws, and without their joynt Consent, no new Laws can pass, that be obligatory to the Subject.

2. *Vulgarly*, the word is used for the *Two Houses*, the Lords and Commons, as when we say, the Queen will Call a Parliament, Her Majesty has Dissolved her Parliament, &c.

The Lords of Parliament are divided into two sorts, *viz. Spiritual*, that is to say, the Bishops (who sit there in respect of their Baronies) parcel of their Bishopricks, which they hold in their Politick Capacity, and Temporal.

The Commons are likewise divided into three Classes or parts, *viz.* Knights or Representatives of the Shires or Counties; where note, that tho' the Writ require two Knights to be Chosen, and that they are called Knights, yet there is no necessity that they should actually have the degree of Knighthood, provided they be but Gentlemen; for the Statute 23. *Hen.*6. cap. 15. hath these words, *That the Knights of the Shires, for the Parliament hereafter to be chosen, shall be notable Knights of the same* Counties *for which they shall be chosen,* OR OTHERWISE, *such Notable Esquires or Gentlemen born of the same* Counties, *as shall be able to be Knights, and no Man to be such Knight, which standeth in the degree of a Yeoman and under.*

Secondly, Citizens chosen to Represent Cities.

Thirdly, Burgesses, that is to say, those that are chosen out of Boroughs.

Note, That the difference between a City and a Borough

Borough is this, a City is a Borough Incorporate, which is, or has been within time of Memory an Episcopal See, or had a Bishop; and this (although the Bishoprick be dissolved, as *Westminster* having heretofore a Bishop, though none now) still remains a City. *Coke* 1. *Instit.* Sect. 164. Boroughs are Towns Incorporated, but such as never had any Bishops.

Of the Three Estates in Parliament.

THere has been a great Debate about the *Three Estates*, some zealously pleading, That the Bishops are one of the Three Estates of the Realm, and the Lords Temporal a Second, and the Commons-house a Third, and the *Queen* over all as a Transcendent by herself: Others as stiffly deny this, and assign the *Queen* (as she is the Head of the Common-wealth) to be the first Estate, the Lords, as well Spiritual as Temporal joyntly, to be the Second, and the Commons-House to be the Third.

Non opis est nostræ tantas Componere Lites.

We shall not presume to undertake a Decision of this arduous Controversie, but in our poor Opinion the matter seems to appear more difficult than really it is, by means that the contending Parties do not first plainly set down what it is they severally mean by the word *Estate*. Which may be taken, 1. For a Rank, Degree, or condition of Persons considered by themselves, different in some notable Respects from others wherewith they may be compared. And in this respect, my Lords the Bishops, may very properly be said to be an Estate, or one of the Estates of the Realm, for then there will be several Estates, above the number of Three, for so in the House of Commons there may be said to be three Estates, *viz.* *Knights*, *Citizens* and *Burgesses*. And heretofore, in the days of Popery, when there were 26 Abbots and Priors, that held *per Baroniam* too, as well as the Bishops, called to the Parliament, and sat in the Lords House, [see *Fuller's*

Church-History Lib. 6. Fol. 292.] Whether they being Religious and Monaſtical Perſons; whereas the Biſhops were *Seculars* (no ſmall difference in their account) might not as well claim to be a diſtinct Eſtate by themſelves, as now the Biſhops do, may be a queſtion.

But ſecondly, When we ſpeak of three Eſtates in the *Conſtitution* of our Engliſh Government, 'tis moſt natural to mean and intend ſuch a Poize in the Ballance, or ſuch an Order or State, as hath a Negative Voice in the Legiſlative Power: For as the *Queen* and Commons excluding the Lords, ſo neither the *Queen* and Lords excluding the Commons; much leſs the Lords and Commons excluding the *Queen*, can make any Law; but this glorious *Triplicity* muſt be in mutual *Conjunction*, and then from their united Influences ſpring our happy Laws. But in this ſence the Lords Spiritual by themſelves, have no Pretence to be a *Diſtinct Eſtate*: That is, they have by themſelves no Negative Voice, (which I conceive the proper *Characteriſtick* or *Eſſential Mark* of each of the three Eſtates,) for, ſuppoſe a Bill paſs the *Commons*, and being brought into the Lords Houſe, all the 26 Biſhops ſhould be againſt, and ſome of the Temporal Lords, yet if the other Temporal Lords be more in number than the Biſhops, and thoſe that ſide with them, the Bill ſhall paſs as the Act of the whole Houſe; and if her Majeſty pleaſe to give it her Royal Aſſent, is undoubted Law. Which demonſtrates the Biſhops of themſelves have no Negative Voice, and conſequently are none of the three Eſtates of the Realm. But if any will have them called an Eſtate, and mean ſomething elſe by it, if he pleaſe to explain his Notion, 'tis like I ſhall not contend with him about a fiddle faddle word.

Touching the Power *of the Parliament.*

THE Juriſdiction of this *Court*, (ſaith *Coke*, 1 *Inſtit. Sect.* 164) is ſo Tranſcendent, that it Maketh, Inlargeth, Diminiſheth, Abrogateth, Repealeth and reviveth

reviveth Laws, Statutes, *Acts* and Ordinances, concerning Matters *Eccleſiaſtical*, *Civil*, *Martial*, *Marine*, *Capital*, *Criminal* and *ommon*. And 4 *Inſtit.* Fol. 36. The Power and Juriſdiction of the Parliament for making of Laws in proceeding by Bill, is ſo Tranſcendent and Abſolute, as it cannot be confined either for *Cauſes* or *Perſons* within any bounds. Of this *Court* it is truly ſaid *-Si Antiquitatem ſpectes eſt vetuſtiſſima, ſi Dignitatem, eſt Honoratiſſima ſi Juriſdictionem eſt capaciſſima*; if you regard its Original, it is moſt Ancient; if its Dignity, it is moſt Honourable; if its Juriſdiction, it is moſt Capacious.

Sir *Thomas Smith*, a great Stateſman, and in high eſteem and place under Queen *Elizabeth*, in his Treatiſe, *de Republica Anglorum* Lib. 2. cap. 2. gives this Character of this ſupream *Court*—*In Comitiis Parliamentaris, poſita eſt omnis Auguſtæ, abſolutæque poteſtatis vis, veteres leges jubent eſſe irritas, novas inducunt; præſentibus juxta ac futuris modum conſtituunt; Jura & poſſeſſiones hominum privatorum commutant, Spurios natalibus reſtituunt, cultum divinum ſanctionibus corroborant; pondera & menſuras variant; JUS IN REGNO SUCCEDENDI PRESCRIBUNT*, &c. *The moſt high and abſolute power of the Realm of* England *conſiſteth in the* Parliament; *for the* Parliament *abrogateth old Laws, maketh new, giveth order for things paſt, and for things hereafter to be followed, changeth the* Rights *and* Poſſeſſions *of Private Men; Legitimiateth Baſtards, Corroborates Religion with Civil Sanctions, Alters Weights and Meaſures; PRESCRIBES THE RIGHT OF SUCCESSION TO THE CROWN; Defines doubtful Rights, where there is no Law already made; Appointeth Subſidies, Taxes and Impoſitions; giveth moſt Free Pardons, reſtoreth in Blood and Name*, &c.

As for the Power of Parliaments over both *Statute* and *Common Law*, take it in the Accurate and Significant words of a Parliament, *viz.* the Statute of 25 *H.* 8. cap. 12. as follows,—*Whereas this Realm Recognizing no Superior under God, but the King, hath been and is free from Subjection to any Man's Laws, but only to ſuch as have*

been devised, made, and ordained within this Realm, for the Wealth thereof, or to such other of the People of this Realm have taken at their free Liberty, by their own consent, to be used amongst them; and have bound themselves, by long Use and Custom, to the observance of the same; not to the observance of the Laws of any Foreign Prince, Potentate *or* Prelate, *but as to the accustomed and ancient Laws of this Realm, originally established as Laws of the same by the said Sufferance, Consents and Custom, and none otherwise. It standeth therefore with natural Equity and good Reason, that all and every such Laws Humane, made within this Realm, or induced into this Realm, by the said Sufferance, Consents and Custom, the King and the Lords Spiritual and Temporal, and Commons, Representing the whole State of the Realm, in the most high Court of* Parliament, *have full* Power *and* Authority *to dispense with these and all other Humane Laws of the Realm, and with every one of them, as the Quality of the persons and matter shall require. And also the said Laws and every of them, do abrogate, annul, amplifie or diminish, as to the King, Nobles, and Commons of the Realm, present in* Parliament, *shall seem most meet and convenient for the Wealth of the Realm.*

Thus far that notable Statute, which in truth is only Declarative, and in Affirmance of the Ancient *Common Law* of *England.*

The particular Busines of Parliaments.

BY what hath been said, you may perceive the Work of an English Parliament, is not (as some would have it) only to be Keys to unlock the Peoples Purses. That is but one part, and perhaps one of the least parts too, of their Office. They are to propose new Laws that are wanting for general Good, and to press the Abrogation of Laws in being, when the Execution of them is found Prejudicial or Dangerous to the Publick. They are to provide for Religion, and the Safety and Honour of the Nation, they have a Power (as you have heard from Sir *Thomas Smith*) to order the Right to the *Crown* (understand all this

this with the *Queens* consent) and they have very frequently undertaken, and actually limited the same, contrary to, and different from, *the Common Line of Succession.* Nay by the Statute of 13 *Eliz.* cap. 13. it is expressly Enacted, *That if any person shall, in any anywise, hold and affirm, or maintain, that the Queen, with and by the* Parliament *of England, is not able to make Laws and Statutes of sufficient Force and Validity, to Limit and Bind the Crown of this Realm, and the Descent, Limitation, Inheritance and Government thereof; or that this present Statute, or any part thereof, or any other Statute to be made by the Authority of the* Parliament *of* England, *with the Royal Assent for Limiting the Crown, is not, are not, or shall not, or ought not to be for ever of good and sufficient Force and Validity to Bind, Limit, Restrain and Govern all persons, their Rights and Titles, that in any wise may or might claim any Interest or* Possibility *in or to the Crown of* England, *in* Possession, *Remainder, Inheritance, Succession or otherwise howsoever, and all other* Persons *whatsoever, every* Person *so holding, affirming or maintaining, during the Life of the Queen, shall be adjudged a high Traytor, and suffer, and forfeit, as in Cases of High Treason is accustomed, and every* Person *so holding, affirming or maintaining, after the Decease of our said Sovereign Lady, shall forfeit all his Good and Chattels.*

Which *Clause*, and last mentioned Penalty, is to this day in force, and ought to be considered by any who shall now pretend that an Act of Parliament cannot dispose of the Succession.

As for the Right of making War and Peace, the same is granted to be part of the High Prerogatives of our Kings, yet the wisest of our Monarchs have very rarely entered into any War without the consent of Parliaments: For 1. Who could give them better *Counsel* in such a difficult Affair? 2. The People would more readily expose their Persons in such a War, the Justice and Expediency whereof was approved by their Representatives. 3. The King, from thence, might more certainly promise himself Supplies of Money to carry on the same.

But nothing is more properly the Work of a Parliament, than to redress Grievances; to take notice of Monopolies and Oppressions; to curb the Exorbitances of pernicious Favourites, and ill Ministers of State; to punish such mighty Delinquents as look upon themselves too big for the ordinary reach of Justice; to inspect the Conduct of such as are intrusted with Administration of the Laws, or disposal of the publick Treasure of the Nation: All Crimes of these and the like kinds, are publick Nusances, common Mischiefs, and wound the whole Body Politick in a vital part, and can scarce at all be found out or redressed (by reason of the Power and Influence of the Offenders) but in this great and awful Senate, before whom the haughtiest Criminals Tremble; and it has been observed, that they scarce ever Prosecured any (tho' never so great, or highly in Favour at Court) but sooner or later they hit him, and it proved his Ruin. Take a few Examples. King *Edward* the Second dotes upon *Pierce Gaveston* (a French Gentleman) he wastes the Kings Treasures, has undeserv'd Honours conferred on him, affronts the ancient Nobility. The Parliament in the beginning of the King's Reign complains of him, he is banish'd into *Ireland*: The King afterwards calls him home, and Marries him to the Earl of *Glouceſter*'s Sister, the Lords complain again so effectually, that the King not only consents to his second Banishment, but that if he ever returned, or were found in the Kingdom, he should be held and proceeded against as an Enemy to the State. Yet back he comes, and is received once more by the King as an Angel, who carries him with him into the North, and hearing the Lords were in Arms to bring the said *Gaveston* to Justice, plants him for safety in *Scarborough Castle*, which being taken his Head was chop'd off.

In King *Richard* the Second's time, most of the Judges of *England*, to gratifie certain corrupt and pernicious Favourites about the King, being sent for to *Nottingham*, were, by Perswasions and Menaces, prevailed with to give false and illegal Resolutions to certain questions

Questions proposed by them, declaring certain Matters to be Treason, which in truth were not so; for which, in the next Parliament, they were called to account, and attainted; and Sir *Robert Tresilian*, Lord Chief Justice of *England*, was drawn from the Tower through *London* to *Tyburn*, and there hanged; As likewise was *Blake* one of the *King's Council*, and *Uske* the under Sheriff of *Middlesex*, who was to pack a Jury to serve the present *Turn*, against certain innocent Lords, and others whom they intended to have had taken off, and five more of the Judges were banish'd, and their Lands and Goods forfeited. And the Archbishop of *York*, the Duke of *Ireland*, and the Earl of *Suffolk*, three of the King's *Evil Counsellors*, were forced to fly, and died miserable Fugitives in foreign Parts.

In the beginning of King *Henry* the Eighth's Reign, Sir *Richard Empson* Kt. *Edmund Dudley* one of the Barons of the Exchequer, having, by colour of an Act of Parliament to try People for several Offences without Juries, committed great Oppressions, were proceeded against in Parliament, and lost their Heads.

In the nineteenth Year of the Reign of King *James*, at a Parliament holden at *Westminster*, there were shewn (saith *Baker's Chron.* Fol. 418.) two great Examples of Justice; which, for future Terror, are not unfit to be here related; one upon Sir *Giles Mompesson*, a Gentleman otherwise of good Parts; but for practicing sundry Abuses, in erecting and setting up new Inns and Ale-houses, and exacting great Sums of Money of People, by pretence of Letters Patents granted to him for that purpose, was sentenced to be degraded from his Knighthood, and disabled to bear any Office in the *Common-wealth*, tho' he avoided the Execution by flying the Land: But upon Sir *Francis Mitchel*, a Justice of the Peace of *Middlesex*, and one of the chief Agents, the Sentence of Degradation was Executed, and he made to ride with his Face to the Horse-tail thro' the *City* of *London*. The other Example was of Sir *Francis Bacon*, Viscount St. *Albans*, Lord Chancellor of *England*, who for Bribery was put from his Place, and committed to the Tower.

In King *Charles* the First's time, most of the Judges that had given their Opinions contrary to Law in the case of *Ship-Money*, were call'd to account, and forced to Fly for the same. And in the nineteenth Year of King *Charles* the Second, the Earl of *Clarendon*, Lord Chancellor of *England* being questioned in Parliament, and retiring thereupon beyond the Seas, was by a special Act Banished and Disabled. In a word, it was well and wisely said of that excellent Statesman, Sir *William Cecil*, Lord *Burleigh*, and High Treasurer of England, *That he knew not what an* Act of Parliament *might not do*; which Apothegm was approved by King *James*, and alledged (as I remember) in one of his published Speeches.

And as the Jurisdiction of this Court is so transcendent, so the Rules and Methods of Proceedings there, are different from those of other Courts. For (saith *Coke*, 4. *Instit.* Fol. 15.) *As every Court of Justice hath Laws and Customs for its Directions, some by the Common Law, some by the Civil and Canon Law, some by peculiar Laws and Customs*, &c. *So the High Court of* Parliament, Suis propriis Legibus & Consuetudinibus Subsistit. *Subsists by its own peculiar Laws and Customs. It is*, Lex & Consuetudo Parliamenti, *the Law and Custom of* Parliament, *that all weighty Matters in any* Parliament *moved concerning the* Peers, *and Commons in* Parliament *assembled, ought to be determined, adjudged and discussed by the Course of* Parliament, *and not by the Civil Law, nor yet by the Common Laws of this Realm used in more Inferior Courts. Which was so declared to be*, Secundem Legem & Consuetudinem Parliamenti, *according to the Law and Custom of* Parliament, *concerning the* Peers *of the Realm, by the King, and all the Lords Spiritual and Temporal*; *and the like*, pari Ratione *(for the same Reason) is for the Commons, for any thing moved or done in the House of Commons: And the rather, for that by another Law and Custom of* Parliament, the King cannot take notice of any thing said or done in the *House of Commons*, but by the Report of the *House of Commons: And every Member of the* Parliament *hath a Judicial place, and can be no Witness.*

And

And this is the Reason that Judges ought not to give any Opinion of a Matter of Parliament, *because it is not to be decided by the Common Law,* but Secundem Legem & Conſuetudinem Parliamenti, *according to the Law and Cuſtom of Parliament: And ſo the Judges in diverſe* Parliaments *have confeſſed. And ſome hold, that every Offence committed in any Court puniſhable by that Court, muſt be puniſhed (proceeding Criminally) in the ſame Court, or in ſome higher, and not by any Inferior Court, and the Court of* Parliament *hath no higher.*—Thus *Coke.*

In the Reign of King *Charles* the Second, great *Complaints* was made, about the *Houſe of Commons* ſending for ſome Perſons into Cuſtody by their Serjeant at Arms; but certainly they did no more therein, than what their Predeceſſors have often done; every Court muſt be ſuppoſed armed with a Power to defend it ſelf from *Affronts* and *Inſolencies*: In all Ages, when the Houſe has appointed particular Committies, hath it not been uſual to order, that they ſhall be impower'd to ſend for Papers, Perſons, and Records? But to bring Men to a ſober Conſideration of their Duty and Danger, I ſhall give a few Inſtances, beſides thoſe before mentioned, of what the Houſe of Commons hath done in former Ages.

1. *Anno* 20 *Jacobi*, Dr. *Harris*, Miniſter of *Bletchingly* in *Surry*, for miſ-behaving himſelf by Preaching and otherwiſe, about Election of Members of Parliament, upon complaint, was called to the Bar of the Houſe of Commons, and there, as a Delinquent on his Knees, had Judgment to confeſs his Fault there, and in the Country, in the Pulpit of his Pariſh Church, on Sunday before Sermon.

2. *Anno* 21 *Jacobi*, *Ingrey* under Sheriff of *Cambridgeſhire*, for refuſing the Poll, upon the Promiſe of Sir *Thomas Steward* to defend him therein, kneeling at the Bar, received his Judgment to ſtand committed at the Serjeant at Arms, and to make Submiſſion at the Bar, and acknowledge his Offence there, and to make a farther Submiſſion openly at the Quarter Seſſions, and there alſo to acknowledge his Fault.

3. *Anno*

3. *Anno* 20 *Jacobi*, the Major of *Arundel*, for misbehaving himself in an Election, by putting the Town to a great deal of Charge, not giving a due and general Warning, but packing a number of Elections, was sent for by Warrant, and after ordered to pay all the charge, and the House appointed certain Persons to adjust the Charges.

4. And 3 *Car.* 1. Sir *William Wray*, and others, Deputy Lieutenants of *Cornwal*, for assuming to themselves a Power to make whom they pleased Knights, and defaming those Gentlemen that then stood to be chosen, sending up and down the Country Letters for the Trained Bands to appear at the Day of Election, and Menacing the Country, under the Title of *His Majesty's Pleasure*; had Judgment given upon them to be committed to the Tower. 2. To make Recognition of their Offence at the Bar of the House upon their Knees, which was done. 3. To make a Recognition and Submission at the Assizes in *Cornwal*, in a Form drawn by a *Committee*.

5. But most remarkable are the Proceedings in the same Parliament, *Anno.* 1628. against Dr. *Manwaring*, who being there charged with Preaching and Publishing Offensive Sermons, and the same referred to a Committee, they brought in their Report, which was delivered to the House with this Speech, as I find it in Dr. *Fuller's Church-History*, Lib. 11. Fol. 129.

Mr. *Speaker*,

I am to deliver from the Sub-Committee, a Charge against Mr. Manwaring, *a Preacher and Doctor of Divinity, but a Man so Criminous, that he hath turned his Titles into Accusations; for the better they are, the worse is he, that hath disbenoured them. Here is a great Charge that lies upon him, it is great in it self, and great because it hath many great Charges in it:* Serpens qui Serpentem Devorat, fit Draco; *his Charge having digested many Charges into it, is become a Monster of Charges. The main and great one is this,* a Plot and Policy, *to alter and subvert the Frame and Fabrick of this State and Common-wealth. This is the great one, and it hath others in it that gains it more greatness; for to this*

this end, he labours to infuse into the Conscience of His Majesty, the Persuasion of a Power not bounding it self with Laws, which King James *of famous Memory calls, in his Speech in Parliament, 1619.* Tyranny, *yea,* Tyranny accompanied with Perjury.

2. *He endeavours to persuade the Consciences of the Subjects, That they are bound to obey Illegal Commands; yea, he damns them for not obeying them.*

3. *He Robs the Subjects of the Property of their Goods.*

4. *He Brands them that will not lose this* Property, *with most scandalous and odious Titles, to make them hateful both to* Prince *and* People, *so to set a Division between the Head and Members, and between the Members themselves.*

5. *To the same end (not much unlike to* Faux *and his Fellows) he seems to Blow up* Parliaments *and* Parliamentary-Power. *These five being duly viewed, will appear to be so many Charges, and withal they make up the main and great Charge, a Mischievous Plot to Alter and Subvert the Frame and Government of this State and Common-wealth. And now, that you may be sure that Mr* Manwaring, *tho' he leave us no* Propriety *in our Goods, yet he hath an absolute Propriety in his Charge;* Audite ipsam Belluam, *hear Mr.* Manwaring *by his own words, making up his own Charge.*

Here he produced the Books, particularly insisting on *p.* 19. 29, and 30. in the first Sermon, *p.* 35, 36, and 48. in the second Sermon; all which passages he heightened with much Eloquence and Acrimony, thus concluding his Speech, *I have shewed you an Evil-Tree, that bringeth forth Evil Fruit; and now it rests with you to determine, whether the following Sentence shall follow,* Cut it down, and cast it into the Fire.

Four Days after the Parliament proceeded to his Censure, consisting of eight Particulars, it being ordered by the House of Lords against him, as followeth:

1. To be Imprisoned during the Pleasure of the House.

2. To be Fined a Thousand Pounds.

3. To make his Submission at the Bar in this House, and in the *House of Commons,* at the Bar there,

there, *in Verbis Conceptis*, a set Form of words framed by a Committee of this House.

4. To be Suspended from his Ministerial Function three Years, and in the mean time a sufficient Preaching-man to be provided out of the Profits of his Living, and this to be left to be performed by the Ecclesiastick Court.

5. To be disabled for ever hereafter from Preaching at Court.

6. To be for ever disabled of having any Ecclesiastical Dignity in the Church of *England*.

7. To be Uncapable of any Secular Office or Preferment.

8. That his Books are worthy to be Burned, and His Majesty to be moved, that it may be so in *London*, and both the *Universities*.

And accordingly he made his humble Submission at both the Bars in Parliament, on the Twenty-third of *June* following, and on his Knees before both Houses, submitting himself, with outward Expressions of Sorrow, as followeth:

I do here, in all Sorrow of Heart, and true Repentance, acknowledge those many Errors and Indiscretions that I have committed, in Preaching and Publishing the two Sermons of mine, which I called Religion and Allegiance, and my great Fault in falling upon this Theam again, and handling the same rashly, scandalously and unadvisedly, in my own Parish Church in St. Giles's *in the Fields, the Fourth of* May *last past. I do humbly acknowledge these two Sermons to have been full of dangerous Passages and Inferences, and scandalous Aspersions, in most part of them. And I do humbly acknowledge the Just Proceedings of this Honourable* House *against me, and the just Sentence and Judgment passed upon me for my great Offence. And I do, from the bottom of my Heart, crave Pardon of God, the King, and this Honourable* House, *and the Common-wealth in general, and those worthy Persons adjudged to be reflected upon by me in particular, for these great Offences and Errors.*

The Truth is, 'tis the High Court of Parliament, that only can hinder the Subject from being given up

as a Prey to the Arbitrary Pleasure, not only of the Prince, if he should attempt it, but (which is ten times worse) to the unreasonable Passions and Lusts of Favourites, chief Ministers and Women; when otherwise instead of a Monarch (who as sometimes it may happen shall Govern but in Name) we might be ruled like the ancient *French*, by an insolent *Major of the Palace*, who will be sure to mind the private Interest of himself and Family, more than that of the Prince, or the Publick Good: Or like the *Turkish* Empire under a weak Grand Signior, by the prevailing Concubine of the Seraglio, who is perhaps her self managed by no other Dictates, than that of her chief Eunuch, or She slave. It is strange, therefore, to observe the impotent Ambition of some Men, (and such as, with shame let us speak it, boast themselves *Englishmen* too) who (provided they may trample upon, and domineer over their Inferiors) care not how much their Superiors do the like over them. Their Souls (like most insolent Men) being mean enough to submit thereunto; or, who can enough deplore and abhor the Ignorance and Stupidity of some lazy insignificant Gentlemen, who care not how things go, provided they may enjoy their Hawks, Hounds, and Bowling-green Meetings; whilst not only for Divinity, but Politicks too, they are govern'd by their more Impertinent Chaplain, or the Parson of their Parish? Now, nothing is more Obvious, than the Designs of some Idle, Covetous, Sycophant Clergy-men, who, like Ivy, though it cannot grow without the support of the Oak, and yet will destroy it at last, do in private Parlours over the Glass, whilst Healths go round, as well as in their Pulpits over their Cushions, set up Absolute Monarchy to be *Jure Divino*, declaiming against the unreasonable Stubbornness of any Parliament that will not give away the People's Money, and submit themselves to be Fleec'd, as often as the prime Minister or Favorite think fit; they cry up the Prince like an Angel, so long as he will be their Executioner, to Whip, Imprison, or Hang, all that will not truckle to their

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own Pride and Avarice; or refuse to give up their Souls once again to be managed by an Implicit Faith, whereby in the mean while these *Huffish Jacks* and might not be troubled with those uneasie Talks of *Studying, Preaching*, &c. but may have nothing else to do, but live at ease, keep their Coach and Horses, with a silly Curate to do all the Drudgery; whilst they themselves are making Addresses above, by flattering and informing at some great Nobleman's or Bishop's Table, and railing against the Whiggs and Fanaticks, and speaking a good word for Popery by the By: Or else, if their parts reach so high, by some Socinian Pamphlet, or Sermon against the Government Establish'd by Law, they teach, that Men have no Property either in their Lives or Goods, but only during the Prince's pleasure, &c. If there be not such a parcel of Things as these that call themselves Divines, then no Body is concerned in this Character; but if there be, they are the worst of Men, and ought not only to be exposed, but severely punished.

Therefore since at present we live under so happy a Government, where being securely landed our selves, we behold the Shipwrack of our Neighbours; it is therefore the Indispensible Interest and Duty of all true English-men, to maintain these Privilidges, conveyed from their Ancestors, through so many Generations, inviolable, upon which all our (Earthly, and in a great measure our Spiritual) Happiness, Safety, and Well-being depends. Nor can any Man in his Senses but acknowledge, that the only right way to attain that end, is to look well to the Means, and that is, by taking the care what Persons they choose for their Representatives, with whom they must trust their Estates, Lives and Liberties.

Now this Government of a Prince's, by and with Parliament's, when-ever the Condition and Necessities of the State require them, however according to its Primitive Institution, it was the best of all others; yet as well in that, as in Christianity it self, there have been found out ways of Corruption, and that is, when either

either they ſit too loong, or too ſeldom, or are too frequently diſſolved; too frequent Diſſolutions being no leſs dangerous to the Subject, than too long Seſſions. Nevertheleſs it may be in the Electors power to avoid the Inconveniencies of both, and that is by making a good Choice.

Whereas if the Country People will ſell all that they have for a little Roaſted Beef, a Glaſs of Sack, and a Pot of Ale, chooſing him that will give them moſt Drink to day, though they know him to be a Perſon, who will ſell both their Religion, Liberties and Fortunes to morrow, then frequent Diſſolutions will of neceſſity ruin us, and utterly debauch this Excellent Conſtitution; for the honeſt Country Gentleman, deſigning no other private Advantage, but the true Service of the *Queen* and his Country, hath no reaſon, nor is he able, once in half a Year, to ſpend 4 or 500 *l.* only to purchaſe a place full of Labour, Charge, Trouble and Danger, without any Profit to himſelf, only to ſerve thoſe who put him to ſuch an unkind Expence. And when Honeſt Loyal Gentlemen are thus diſcouraged, if this Sottiſh Humour amongſt the Electors continue, the Papiſts, and their Faction, or neceſſitous Perſons of proſtituted Conſciences, will carry their Votes; for they can afford to buy them at large Rates, being reſolved to repay themſelves, tho' with the Ruin of the Nation.

This is no vain Surmize, or idle Speculation, but the very Truth of the Caſe; and the meaneſt Countryman that has Eyes in his Head, and will uſe them, cannot but ſee it: For did you ever know a Coach-man, or Groom, buy his place, unleſs he deſigned to rob his Maſter's Bin? Therefore whoever you put to charge in your Elections, blame him not, if he makes Money again of what he bought, and lays out his Vote in the Houſe, not for your Good, and that of the Publick, but that way that will beſt pleaſe the Miniſters of State, that ſo he himſelf may get a good Place or Preferment, or Title of Honour by the Bargain. I ſay, though he himſelf be a baſe Wretch for ſo doing, yet You cannot

blame

blame him, ſince you did not ſo lend him your Truſt, but ſold it him; and what a Man hath purchaſed with his own Money, he may lawfully ſell again.

Therefore that Man who does wilfully give his Voice for one Diſaffected, does his indeavour to ruin both his Country, and himſelf, and his Poſterity, and to be as bad, or worſe, than the Perſon he chooſes; and if the greater part of the Houſe happen to be Wiſer or Honeſter, it is no Thanks to him; he did as much as he could to debauch it; and therefore for his part, if none elſe were concerned with him, it were no matter if he were forthwith made a *Slave*, and his Children *Perpetual Vaſſals*.

The before-mentioned old Lord Treaſurer *Burleigh*, (who is thought to have been the greateſt Stateſman that ever this Nation bred) did frequently deliver as a Maxim, or rather as a Prophecy, *That* England *can hardly be ruined, unleſs it be by her own Parliament*; undoubtedly foreſeeing that other Oppreſſions, as being wrought by Violence, might perhaps by Violence be in time ſhaken off again; whereas, when in a Parliamentary way we are undone by a Law that can never be revers'd, but by a down right Rebellion, becauſe the Parties advantaged by that Law, will never agree to the repealing of it; and a Rebellion is both ſo dangerous, and of ſo black a Character, as Men either Rich or Conſcientious, will not engage therein, and therefore no publick Miſchief is ſo irrecoverable, as that which is grown into a Law; and nothing, you know, can become ſo, but what is impoſed on you by Parliament. Such is the Happy Frame of your Government, ſo prudently and ſo ſtrongly have your Anceſtors ſecured Property and Liberty, (reſcued by inches out of the hands of incroaching Violence) that you cannot be enſlaved, but with Chains of your own making; for as you are never undone till you are undone by Law; ſo you can never be undone by a Law, till you chuſe the undoing Legiſlators; and may not your Enemies add Scorn to their Cruelty, and pretend Juſtice for both, when they can plead they had never trampled

trampled on your Heads, had not you laid them on the Ground ?

From what has been ſaid, it evidently appears, of what vaſt Importance it is at all times, whenever Her Majeſty ſhall be pleas'd to Iſſue out Her Writs for a Parliament, to chuſe (as much as in us lies) a good Houſe of Commons, as we tender our Religion, Liberties, Eſtates and Poſterity; upon our well or ill chuſing, depends our well or ill being; 'tis here as in Marriage, or War, there is no room for ſecond Errors, one Act may ruin a Nation beyond retrieve.

Beſides, they whom you chuſe, will repreſent the qualities as well as the Perſons, and if you ſend up a falſe Glaſs, it will repreſent you with an ugly Face; you have hitherto had the report of an ancient and grave People, but if you chuſe raw Spalings, green Heads, unexperienced Children, the World will Judge of you, as they once did of the *Grecians*, that you were either always Children, or are grown twice ſo; you have long been a famous Religious Proteſtant Nation, but if you chuſe debauched ſwearing Atheiſts, Men of no Religion, or ſuch as are meer Formaliſts, or inclinable to Popery, what can the World think, but that the Nation has loſt its ſenſe of Religion, and is content to be led back into the Egyptian Darkneſs of Romiſh Fopperies? You have formerly had the Character of a ſober temperate Nation, but if you chuſe Drunkards for your Truſtees, or give your Voices for thoſe that gorge you moſt with Liquor: What can be ſuppoſed, but that you are already Drunk with Folly, and juſt Reeling into Slavery ?

Some Directions concerning the Choice of Members to ſerve in Parliament, and the Qualifications that render a Gentleman Fit or Unfit, Worthy or Undeſerving of your Voices for great a Truſt.

1. AVoid all ſuch as hold any Office of conſiderable Value during Pleaſure, they being ſubject to be Over-awed. For although a Man wiſh well to his

his Country, and in the Betraying thereof, knows, tha, at the long run he Miſchiefs and Inſlaves his Poſterity; if not himſelf, yet the narrowneſs of Mens Minds is ſuch, as makes them more tenderly apprehend a ſmal preſent Damage, than a far greater hereafter. Such Men muſt of neceſſity be under a great Temptation and Diſtraction, when their Conſciences and Intereſt look different ways. For to ſay truth, ſuch an Office is but a ſofter word for a *Penſion*: Therefore ſince theſe Men know before-hand, the Inconveniencies that attend the Truſt of a Member of Parliament faithfully diſcharged, 'tis very ſuſpicious and reflecting upon their Honeſty, if any ſuch ſtand for it: And I think we are bound in Charity, nor can we do them a greater Courteſie, than to anſwer their Petition in the Lord's Prayer —— *Not to lead them into Temptation.*

2. Suſpect all thoſe (eſpecially if they are Men of ill Repute) who in their Profeſſion, or near Relations, have Dependency upon the Court. For, though to be the King's Servant is no Bar from being a Parliament-Man, or from ſerving his Country honeſtly in that Station, and no doubt ſeveral of them have, at divers times, well diſcharged the ſame; yet frequently ſuch Perſons, (unworthily) gueſſing at their Prince by themſelves, are apt to Vote right or wrong, as they imagine will moſt pleaſe the Prerogative Party; and 'tis an hard matter for a Courtier to pleaſe that great (Stateſman and) Miniſter who ſupports him, and thoſe whom he Repreſents, at the ſame time: And if he endeavours to oblige both, he becomes ſuch an uncertain Weathercock, as moſt commonly he pleaſes neither. And therefore, the moſt prudent and honeſteſt of the Courtiers, are always obſerved to decline being Parliament-Men, for this very reaſon.

3. Meddle not with ſuch as have been, or are like to prove Pentioners, or receive Sallaries for ſecret Services. I know they would, ſome time ſince, brazen it out, that there were no ſuch Men, no ſuch Practices, but the contrary is notorious: Did not the Houſe of Commons

Commons once take the thing into Examination? nay, Did not Sir *S. F.* by his Memory (without the Books, which for ſome reaſons were refuſed to be brought in) name about Thirty of them, and the reſpective Sums yearly paid to each? And would not many more have been diſcovered, and the whole knot of them ſeverely and exemplarily puniſh'd, if that Parliament had a little longer continued? Now, there is none more implacably your Enemy, than that Perſon whoſe Intereſt it is to deſtroy you; that muſt neither eat nor drink, except you ſtarve; that muſt go in Rags, except you go naked; are taught to fleece you, that they may keep themſelves warm. To prevent this, avoid not only all former Penſioners, but ſuch others as may be in danger to become ſo: Therefore, meddle not with Men of neceſſitous Fortunes, or much in debt. The Repreſentatives of a Nation, ought to conſiſt of the moſt Wiſe, Wealthy, Sober, and Couragious of the People; not Men of mean Spirits, and little Figures, and ſordid Paſſions, that would ſell the Intereſt of the People that choſe them, to advance their own; or be at the beck of ſome great Men, in hopes of a lift to a good Imploy. Thoſe that have fair Eſtates have in a manner given Hoſtages to their Country, and muſt be Errant Fools, before they can play the Knave with you. But what cares the needy Paſſenger if the Ship periſh, if he can but ſave himſelf in the Long-boat, or get ſome Booty by the Wreck? What Protection do you expect from them, who cannot ſhew their Faces with Confidence without a Protection either in or out of Parliament? Who are no leſs apprehenſive of a Bayliff, than of the once growing Greatneſs of the *French*; and dread no Popery half ſo much as an *Out Lawry*? Will you ſecure them within the Walls of the Houſe of Commons, who were better ſecured within the Walls of a Common Goal? Who can never pay their Debts contracted by their Prodigality, but out of your Purſes; and muſt run you in, to get themſelves out of their Mortgages? Theſe Mens fear of being Diſſolved, makes them ſubmit

mit to any thing, rather than be left to the unmerciful Rage of their hungry Creditors, who have so long fasted for their Money. For all such Persons (though some of them may be lookt upon as honest fair conditioned Gentlemen, and good House-keepers) are in danger of being tempted to repair the Decays of their own private Fortunes, but the Ruin of the Publick. Moreover, the chusing of such broken Fortunes, decays Trade, and ruines whole Families; insomuch that I have known it drive many Men (contrary to their own Inclinations) to wish never to see Parliaments more in *England*. In a word, If Beggars ever come to be your Representatives, how can they judge what is expedient for the Nation to spare, whose only care is, to get a piece of Money to spend?

4. As you are unadvisedly to chuse such as retain to the Court at home, so much less are you to elect any such as have their Dependence upon Foreign Princes or States, these are under strong Obligations to see you ruined; for your own Reason will tell you, that no Foreign Power will prodigally throw away his Pistoles, where he expects not an Harvest answerable to his Seed. 'Tis possible this Caution may not be unnecessary, for 'tis more than suspected, that there are some such degenerated English-men, who having forsaken the Interest of their Native Country, have sold themselves to an Outlandish Interest, that they may the better gratifie their own Ambitions and those Potent Lusts which their own meaner Fortunes could not otherwise feed or satiate.

5. Be not over-fond to receive Bribes and Gratifications, from Persons that would fain make a Prey of you, and by their Purses, Lavish Treats, and Entertainments, would allure you to prostitute your Voices for their Elections; you may be assured they would never bid so high for your Suffrages, but that they know where to make their Markets. Chuse the worthy unwilling Person, before the complemential unworthy Man, whose extraordinary Forwardness prognosticates he seeks not your Good, but his own, sepa-

rate

rate from the publick. Let us not play the Fools or Knaves, to neglect or betray the Common Intereſt of our Country, by a baſe Election; let neither Fear, Flattery, nor Gain, Biaſs us. Conſider with your ſelves, what Loſers you will be, if to Laugh and be Merry one day, the Perſon you chuſe, ſhould give you and your Children occaſion to Mourn for ever after. ——Say not, *He's but a ſingle Perſon, one Man cannot do ſuch Hurt.*—Silly Men! What if all other places ſhould be as bad as your ſelves? Then all the Houſe would be of a piece; and beſides, do not you know, that ſometimes a ſingle Man has carried a Vote, which perhaps was no leſs Miſchievous than Irretreivable? Think how juſtly the gallant ancient Heathens may upbraid this Senſeleſs of us Chriſtians, when as they Sacrificed many of their Children, nay, and oftentimes their own Lives, for the good of their Country: So on the contrary, do we Sacrifice, or at leaſt Hap-hazard, both our Religion, Lives, Children and Country, for the Swiniſh Pleaſure of a day or two's Debauchery.

6. Make not your publick Choice the Recompence of private Favours; 'tis not pleaſing a Neighbour, becauſe Rich and Powerful, but ſaving of *England*, that you are to regard. Neither pay or return private Obligations at the Coſt of the Nation. Sir *John* is a pretty Gentleman, and treats People Civilly; and my Landlord is a good Man, and has been kind; and Eſquire ſuch a one is our next Juſtice of Peace, but yet I will not give my Voice contrary to my Conſcience, or have a hand in a Choice that may ruin my Country, to gratifie any or all of them. Let no ſuch Engagements put you upon dangerous Elections, as you love the Liberties and Freedom of your Poſterity; but tell them in this Affair they muſt hold you excuſed, for that the weight of the matter will well bear it; this is your Inheritance, all may depend upon it; 'tis a more modeſt Requeſt, if they would deſire you to give them that Freehold and Eſtate that qualifies you for an Elector, than to preſs you to be for a Man, that in your Conſcience you think unfit, or

not

not ſo fit as his Competitor as for ſo weighty a Truſt. Men do not uſe to lend their Wives, or give their Children to ſatisfie perſonal Kindneſſes; nor ought you to make a Swop of your Birth right (and that of your Poſterities too) for a Meſs of Pottage, a Feaſt or a luſty Drinking bout; there can be no proportion here, and therefore none muſt take it ill, that you uſe your Freedom about that which, in its Conſtitution, is the great Bulwark of all your ancient Liberties.

7. Have a care of Ambitious Men, and Non-Reſidents, ſuch as live moſt about the Town, and not with their Eſtates in the Country. Theſe ſeek Honours and Preferments above, and little or never imbetter the Country with their Expences or Hoſpitality, for they are too much for themſelves, to act vigorouſly for the Advantage for their Country; or if in the Houſe they do for a while ſwagger a little, and ſpeak it briskly, 'tis only that the Court may take notice of them, and take them off by ſome Preferment; and then theſe falſe Patriots ſhall be the only Sticklers for unbounded Prerogative.

8. Be reſolved (againſt all Temptations) to chuſe no Minors: What, will you be content with Sucking Stateſmen? and Beardleſs Politicians? and *Rehoboam's* Counſellors? Then expect, for well you deſerve, to be laſh'd with Scorpions: Can you judge them fit to diſpoſe of your Liberties, Lives, Eſtates and Religion, who cannot legally diſpoſe of their own Eſtates or themſelves? What Security can they give you, that they will not give away Yours and you, whoſe Bond, in the Eye of the Law, will not be taken for Forty Shillings? But ſure, your own Experience, of what ſuch young green Perſons have been, and done, in former Parliaments, hath, I hope, learned you ſufficient Wiſdom, not to chuſe the like again.

9. Elect no Prodigal or Voluptuous Perſon, for beſides that, ſuch are not regular enough to be Law-makers, they are commonly idle, and though poſſibly they may wiſh well to your Intereſt, yet they will rather loſe it than their pleaſures; they will ſcarce leave

one of their Nightly Revellings, to give you their attendance and ſervice next Day, and therefore they are not to be relied upon. And upon this occaſion I ſhall borrow the words of an Author, to whom I do not much deſire to be beholden; *Some Senators are drawn from their Duties by Pleaſure; perhaps a Party at* Tennis, Bowls, Cards, a pack of Dogs, a Cock-fighting, or a Horſe match, a Comedy, a Good-Fellow, or a Miſtreſs. *And while they are thus imployed, the Vigilant Faction ſteals a Vote that is worth a Kingdom.— Some again are ſo tranſported with the Vanity of Dreſs and Language, that rather than ſerve the Publick with one Hair amiſs, or with one broken Period, they will let the Publick periſh,* Mallent Rempublicam turbari, quam capillos. *Theſe, while their Country lies at Stake, are ordering of their Heads, and Poliſhing the Phraſe, ſhaping the parts of a Set-Speech, till it is too late to uſe it. Nothing, methinks, does leſs beſeem a Grave Aſſembly, than this* Facultatula Loquendi; *this ſame Rhetorical Twittle-twattle, it ſpins out ſo much time in tedious Circumſtance, that it makes a Man e'en Sick of a good Cauſe, and for the very Form, prejudge the Reaſon of it.— Sloth and Neglect are yet more dangerous in a Senator, in regard of Surprizes from the Faction; theſe think, a wet Day, or a cold Morning, a ſufficient diſcharge of their Attendance; and while they are taking t'other Nap, or t'other Bottle, the Monarch perhaps has loſt his Crown, or the Subject his Liberty.*

9. Avoid all thoſe that play the Proteſtants in Deſign, and are indeed diſguiſed Papiſts, ready to pull off their Mask on the firſt opportunity, whenever time ſerves. You may know them by their Swaggering, for a Popiſh Succeſſor to mentain the Proteſtant Religion: Their Laughing at the Popiſh Plot, and diſgracing the Evidence of it; and at the ſame time affirming (without any grounds) the Reality of a Presbyterian Plot; their aſſociating with known Papiſts, and winking at them; but eager Hears to put the Laws in Execution, with the utmoſt Rigour, upon *Proteſtant* Diſſenters: Theſe are Men whoſe Affection for the *Proteſtant* Intereſt, notwithſtanding all their

fair Speeches, may justly be questioned, since their Practice gives their Words the Lye: Nor will their large Pretensions, and seeming Zeal, for the Church of *England*, at all prevail with wise Men; for we know, the *Papists* themselves, when 'tis for their Interest, will pretend the same thing, and speak fair of our Church, and rail only upon the Fanaticks; when yet, in their Hearts, they hate our Church, as much as they do any of our Sects: Observe all their *Pamphlets*, the Noise is against the *Presbyterians* and *Dissenters*, but 'tis with a design to destroy them first, and the Church of *England* afterwards; for when so great a Body of *Protestants*, are presented as Disloyal and Dangerous, and crush'd and undone, the Church of *England* Men will be left alone, and then they hope to deal with them well enough: And that this is their aim, may be perceived, if you observe how Zealous the *Papists* are, to stir up prosecution against the Dissenters; and none more joyful when it goes on, *&c.* Now, what's all this for? Are they, think you, indeed and in earnest, so very kind to the Church of *England*? For what acquaintance? No, no, 'tis all Dissimulation and Roguery, a design which they drive on, first to divide, and then to ruin us. Therefore beware how you chuse any such Tool, as they make use of therein. The contrary are Men that bless God for the most happy discovery of the Hellish Popish-plot, and all their wicked Shams ever since, and would have the bottom thereof fairly searched into, and the Traytors, though never so great or potent, brought to condign punishment; and in their Conversation, zealously direct themselves in an opposition to the *Papal Interest*, which indeed is a Combination against good Sense, Reason, and Conscience, and to introduce a blind Obedience without (if not against) Conviction: And that principle, which introduces Implicit Faith, and Blind Obedience, in Religion; will also introduce Implicit Faith and Blind Obedience in Government: So that it shall be no more the Law in the one than in the other, but the *Will* and *Power* of the Superior,

erior, that ſhall be the Rule and Bond of our Sub-ection; this is that fatal Miſchief Popery brings ith it to Civil Society, and for which all ſuch So-ieties ought to beware of it, and its Friends and bettors, which ſure none can be, but ſuch who are eſign'd for Slaves, by Nature as well as Fortune, de-auch'd, lew'd, unthinking Animals, properly enough lled *Tories*; Silly, Servile, yet Conceited and Cruel reatures, altogether of an *Iriſh* Underſtanding.

10. As for your Citizens, Burgeſſes, and Free-men, Cities and Corporations in particular, I ſhall only y, *That whoever is not fit to be choſen Knights of the Shire, likewiſe unfit to be choſen a Burgeſs?* Neither let the ore ſpecious Pretences of any Man, that ſhall pro-iſe to build you a Town-Hall, or Relieve the Poor ith Money, or out of his Adjacent Woods, or any ch Good-morrows, deceive you; for if ſo, wherein e you wiſer than your Horſes, whom you catch ery day, and clap a Bridle into their Mouths, only ſhewing them a few Oats, which they are never ke to Eat? Even the very Mice are too wiſe to be ken by an Old-Bait, but will firſt have the Trap ew Baited before they'll meedle: And yet I have own a Corporation which has been taken TWICE the ſame Bait. But ſuppoſe theſe Men do really erform what they promiſe, what Compenſation is at, if the ſame Men ſhould lay a good Swinging Tax on your Eſtates, without a real cauſe? Or ſhould ve up the very Power you have, of Taxing your lves, or ſending your Repreſentatives in Parliament, for one bad Parliament may ruine us) what good ould the Money for your Poor do in ſuch a caſe, ore than, that when you are thereby reduced to Beg-ry, you might, perhaps, your ſelves (the Gentry of e Country having no reaſon to relieve you) be rc'd to come in for a ſmall Share of this their Hypo-itical Charity? An Excellent Reward for a Knaviſh olly. Neither ſay —*Oh! This is but one Man, and can ve but one Vote, he will do our Town a great deal of good, d can do us but little hurt if he would* &c. For, 1. (as I

told you before) one or two Voices have, ſometim carried a Vote of great Importance. 2. You kno not what Miſchief your bad Example may do in othe Corporations; and if all ſhould do ſo, what a Miſer able caſe would you be in, ſince the Voices of th Boroughs make two thirds of the Houſe. Laſtly No Man can tell, the Influence that one runnin Talkative ill Man, may get over the reſt of the Houſe, eſpecially over thoſe that weigh Word more than Senſe, or Reaſon, and the Intereſt of ther Country.

Hitherto we have talked Negatives, and deſcribe ſuch as are not fit to be Choſen; Now we come poſi tively to ſet before you who are fit for ſuch a Truſt in ſuch a dangerous Juncture as, ſuppoſe, we may fal into. In order to which, we muſt conſider for wha ends they ſerve, and they are principally Two. The firſt is, The Preſervation of our Religion from Popery the other is, To preſerve inviolable our Liberty an Property, according to the known Laws of the Land without any giving way unto, or Introduction of that Abſolute and Arbitrary Rule practiſed in Foreign Countries, which we are neither to imitate or regard Therefore,

1. Take care to chuſe ſuch as are well known to b Men of good Conſciences, fearing God, throughly Principled in the Proteſtant Religion, and of high Reſolution to maintain it with their Lives and For tunes. And among theſe, rather caſt your Favour upon Men of large Principles (I mean in matter o meer Opinion) ſuch as will not Sacrifice their Neigh bours Property and Civil Rights, to the Forwardnes of their own Party in Religion. Narrow Souls, tha will own none but thoſe that bear their own Image and Superſcription, will ſooner raiſe Perſecution a home, than ſecure us from *Popery* and *Invaſion* abroad *The great Intereſt of* England, *at this day, is, to Tolerat the Tolerable, to bear with the Weak, to encourage the Conſcien tious, and to reſtrain none, but ſuch as would reſtrain all be ſides themſelves.*

2. A

2. As we ought, as near as we can poſſibly judge, to Elect good *Proteſtants* towards God, and juſt towards Men, yet ſince, in this Corrupt Age wherein we live Men are not ſo Spiritual, as they ought to be, it is not amiſs to ſeek for thoſe, whoſe Spiritual Intereſt is ſeconded by a Temporal one; For though Men talk high, and keep a great noiſe with Conſcience, and Love to their Country, yet when you underſtand Mankind aright (not as it ſhould be, but as it is, and, I fear, ever will be) then you will find, that private Intereſt is the String in the Bearers Noſe, it is that Governs the Beaſt. And therefore the ſureſt Champions for our Religion (*Cæteris Paribus*) againſt the Papacy, are our Abby-Landed-Men, for notwithſtanding the Regiſtred Diſpenſation to King *Henry* the Eight, from the *Pope*, for the ſeizing of thoſe Monaſteries and Lands, yet of late they pretend that the *Pope* had no Power to Alien them from the Church; ſo that the preſent *Poſſeſſors* can never truſt or rely upon that, or any new *Promiſes*, or Actual Grants thereof, eſpecially from him, whoſe everlaſting and declared Maxim it is ---- *Never to keep Faith with Heretick*s. Undoubtedly, to make eaſy his aſcent into the Saddle, he will proffer many aſſurances and Grants, but if theſe Abby-Landed Men be not the moſt Silly of all others, they will never believe him. For when he is once firmly ſettled, then will he, with his Canon-Law-Diſtinctions, like Fire under Quick-ſilver, evaporate away all his Promiſes, and violently Reſume the Lands, glorying of his own Bounty, if he require not the mean Profits, ever-ſince they have been Sacriligiouſly with held from Holy-Church.

3. Endeavour to Chuſe Men of Wiſdom and Courage, who will not be Hectored out of their Duties by the Frowns and Scowles of Men. Never had you more need to pitch upon the Old Engliſh Spirit, that durſt be Faithful and Juſt againſt all Temptations. What a degenerate Race have we known, that could never yet reſiſt Smile or Frown, but tamely ſunk below their own Convictions, and knew the Evil they did, yet durſt not but commit it?

4. Make it your business to chuse such as are resolved to stand by, and maintain the *Power and Priviledges of Parliaments* (for they are the Heart-strings of the Common-Wealth) together with the Power and just Rights of the Queen, according to the Laws of the Kingdom, so as the one may not intrench upon the other, And such as with a becoming true English Courage, will *Prosecute* all Traytors, whether already Impeached, or to be Impeached; And to secure us from Popery hereafter, and to remove all Corrupt and Arbitrary Ministers of State, and wicked Judges, and Stifflers of the Discovery of the *Popish Plot*, and *Suborners*, and vile *Pamphleters*, that endeavour so industriously to clear the *Papists*, and expose the *Protestant Religion*, and *Poison the People*.

Lastly, Take particular notice of those who are Men of Industry and Improvement; for such as are Ingenious and Laborious, to propagate the growth and Advantage of their Country, will be very tender of yielding to any thing that may Weaken or Impoverish it.

If you Conduct your selves thus Prudently, Honestly and Gallantly, in your Choice, without putting the Gentlemen, whom you chuse to serve you, to Charges the Consequence will be, that as you will be sure to have a good Parliament, when ever her Majesty shall please to call one, and such as will be Zealous for the Safety of the Protestant Religion, and Prosperity of the Nation, if they shall continue to Sit and Act; so, on the other side, If they should be Dissolv'd, and never so many new Parliaments be called, yet you run no Hazard for the same Candidates will still be ready to serve you. And so we shall conclude our Discourse of Parliaments, when I shall first have observed, that anciently all Free-men of *England* (though not Freeholders) had a Right to chuse their Representatives, till the same was altered and limited by the following Statute, for the Reasons therein mentioned.

The Statute Anno 8 Hen. 6. *Cap.* 7.

What ſort of Men ſhall be *Chuſers*, and who ſhall be Choſen *Knights* of the Parliament.

ITem, *Whereas the Elections of Knights of Shires, to come to the Parliaments of our Lord the King, in many Counties of the Realm of* England, *have now of late been made, by very great, Outragious and Exceſſive Numbers of People, dwelling within the ſame Counties of the Realm of* England, *of the which moſt part was of People of ſmall Subſtance, and of no Value, whereof every one of them pretend a Voice Equivalent, as to ſuch Elections to be made, with the moſt worthy Knights and Eſquires, dwelling within the ſame Counties, whereby Man-ſlaughter, Riots, Batteries, and Diviſions among the Gentlemen, and other People of the ſame Counties, ſhall very likely riſe and be, unleſs convenient and due Remedy be provided, to this behalf.* (2.) *Our Lord the King conſidering the Premiſſes, hath provided, ordained and eſtabliſhed, by Authority of this preſent Parliament, that the Knights of the Shires to be choſen within the ſaid Realm of England, to come to the Parliament of our Lord the King hereafter to be holden, ſhall be choſen in every County of the Realm of England, by People dwelling and reſident in the ſame Counties, whereof every one of them ſhall have Land or Tenement, to the Value of Forty Shillings by the Year, at the leaſt above all Charges.* (3.) *And that they which ſhall be ſo choſen, ſhall be dwelling and reſident within the ſame Counties.* (4) *And ſuch as have the greateſt number of them, that may expend Forty Shillings by the Year, and above, as afore is ſaid, ſhall be returned by the Sheriffs of every County, Knights for Parliament, by Indentures ſealed betwixt the ſaid Sheriffs, and the ſaid Chuſers, ſo to be made.* (5.) *And every Sheriff of the Realm of England, ſhall have Power by the ſaid Authority, to examine, upon the Evangeliſts, every ſuch Chuſer, how much he may expend by the Year.* (6.) *And if any Sheriff return Knights to come to the Parliament, contrary to the ſaid Ordinance, the Juſtices of Aſſizes, in their Seſſions*

of Assizes, shall have Power, by the Authority aforesaid, therefore to enquire. (7.) And if, by inquest, the same be found before the Justices, and the Sheriff thereof be duly attainted, that then the said Sheriff shall incur the Pain of an Hundred Pounds, to be paid to our Lord the King, and also that he have Imprisonment by a Year, without being let to Mainprize or Bail. (8.) And that the Knights for the Parliament, returned contrary to the said Ordinance, shall lose their Wages.

Provided always, that he which cannot expend Forty Shillings by Year, as aforesaid, shall in no wise be Chuser of the Knights for the Parliament. (2.) And that in every Writ, that shall hereafter go forth to the Sheriffs, to chuse Knights for the Parliament, mention be made of the said Ordinances.

NOTE.

Though this Statute make the Penalty on a Sheriff but 100*l.* for a false Return, yet the House may further punish him by Imprisonment, &c. at their pleasure, by the Law and Custom of Parliaments.

We shall now proceed to certain excellent Laws of a latter Date, made for the Explanation and Conservation of our Liberties; and in the first place present you with that excellent Petition of Right, granted by King *Charles* the First.

Anno Regni Caroli Regis Tertio.

The PETITION exhibited to His Majesty, by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, concerning diverse Rights and Liberties of the Subjects.

To the King's Most Excellent Majesty.

HUmbly shew unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament

Parliament assembled, That whereas it is declared and enacted, by a Statute made in the time of the Reign of King Edward *the First, commonly called* Statutum de Tallagio non Concedendo, *that no Tallage or Aid shall be laid or Levied by the King, or his Heirs, in this Realm, without the good Will and Assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other the Freemen of the Commonality of this Realm. (2.) And by Authority of Parliament, holden in the five and twentieth year of the Reign of King* Edward *the Third, it is declared and Enacted, That from thenceforth, no Person shall be compelled to make any Loans to the King, against his Will, because such Loans were against Reason, and the Franchise of the Land. (3.) And by other Laws of the Realm it is provided, That none should be Charged, by any Charges or Impositions called a* Benevolence, *nor by such like Charge. (4.) By which the Statute beforementioned, and other the good Laws and Statutes of this Realm, your Subjects have Inherited this Freedom, that they should not be compelled to contribute to any Tax, Tallage, Aid, or other like Charge, not set by common Consent in Parliament.*

2. *Yet nevertheless of late, divers Commissions directed to sundry Commissioners in several Counties, with Instructions, have Issued, by means whereof your People have been in divers places Assembled, and required to lend certain Sums of Money unto your Majesty; and many of them, upon their refusal so to do, have had an Oath administred unto them, not warrantable by the Laws or Statutes of this Realm, and have been constrained to become Bound to make Appearance and Attendance before your Privy Council, and in other places; and others of them have therefore been Imprisoned, Confined, and sundry other ways molested and disquieted. (2.) And divers other Charges have been laid and levied upon your People, in several Counties, by Lord Lieutenants, and Deputy Lieutenants, Commissioners for Musters, Justices of Peace, and others, by Command or Direction, from your Majesty to your Privy-Council, against the Law and Free Customs of this Realm.*

3. *And where also by the Statute, called the* Great Charter *of the Liberties of* England, *it is declared and Enacted, That no Freeman may be taken or* Imprisoned, *or be Disseised*

of his Freehold or Liberties, or of his free Customs, or be Outlawed or Exiled, nor in any manner Destroyed, but by the lawful Judgment of his Peers, or by the Law of the Land.

4. *And in the Eight and Twentieth Year of the Reign of* King Edward *the Third, it was Declared and Enacted by Authority of Parliament, That no Man of what Estate or Condition that he be, should be put out of his Lands or Tenements, nor taken nor Imprisoned, nor Disinherited, nor put to Death, without being brought to answer, by Process of Law.*

5. *Nevertheless, against the Tenor of the said Statutes, and other the good Laws and Statutes of your Realm, to that end provided, diverse of your Subjects of late, have been* Imprisoned *without any Cause shewed; (2) And when for their Deliverance they were brought before Justices by your Majesty's Writs of* Habeas Corpus, *there to undergo and receive as the Court should Order, and their Keepers commanded to certify the Causes of their Detainour, no cause was certified, but that they were detained by your Majesty's* Special Command, *signified by the Lords of your Privy-Council, and yet were returned back to several Prisons without being charged with any thing, to which they might make Answer according to the Law.*

6. *Whereas of late great* Companies of Soldiers *and Mariners have been dispersed into divers Counties of the Realm, and the Inhabitants against their Wills have been compell'd to receive them into their Houses, and there to suffer them to Sojourn against the Laws and Customs of this Realm, and to the great Grievance and Vexation of the People.*

7. *And whereas also by Authority of Parliament, and in the Five and Twentieth Year of the Reign of King* Edward *the Third, it is Declared and Enacted, That no Man shall be forejudged of Life and Limb against the Form of the Great* Charter *and Law of the Land; (2) And by the said great* Charter, *and other the Laws and Statutes of this your Realm, no Man ought to be judged to Death, but by the Laws established in this your Realm, either by the Customs of the Realm, or by Acts of Parliament: (3) And whereas no Offender of what kind soever, is exempted from the Proceedings to be used, and Punishments to be inflicted by the Laws and Statutes of this your Realm; nevertheless, of late diverse Commissions under Your Majesty's Great* Seal *have Issued forth, by which certain*

tain Persons have been assigned and appointed Commissioners, with Power and Authority to proceed within the Land, according to the Justice of Martial Law, *against such Soldiers and Mariners, or other dissolute Persons joyning with them, as should commit any Murder, Robbery, Fellony, Mutiny, or other Outrage or Misdemeanour whatsoever, and by such summary Course and Order as is agreeable to* Martial Law, *and as is used in Armies in time of War, to proceed to the Tryal and Condemnation of such Offenders, and them cause to be Executed and put to Death, according to the* Law Martial.

8. *By Pretext whereof some of your Majesty's Subjects have been by some of the said Commissioners* put to Death, *when and where, if by the Laws and Statutes of the Land, they had deserved Death, by the same Laws and Statutes also they might, and by no other ought to have been Judged and Executed.*

9. *And also sundry grievous Offenders, by Colour thereof, claiming an Exemption, have escaped the Punishments due to them by the Laws and Statutes of this your Realm, by reason that divers of your Officers and Ministers of Justice have unjustly refused or forborne to proceed against such Offenders, according to the same Laws and Statutes, upon pretence that the said Offenders were punishable only by* Martial Law, *and by Authority of such Commission as aforesaid; (2) Which Commissions, and all other of like nature, are wholly and directly contrary to the said Laws and Statutes of this your Realm.*

10. *They do therefore humbly pray your most Excellent Majesty, that no Man hereafter be compelled to make or yield any* Gift, Loan, Benevolence, Tax, *or such like Charge without Common Consent by Act of Parliament; (2) And that none be called to make Answer, or take such Oath, or to give Attendance, or be Confined, or otherwise Molested or Disquieted concerning the same, or for refusal thereof; (3) And that no Freeman in any such manner as is before mentioned be Imprisoned or Detained; (4) And that your Majesty would be pleased to remove the said Soldiers and Mariners, and that your People may not be so burdened in time to come; (5) And that the foresaid Commissions for proceeding by Martial Law, may be Revoked and Anulled; and that hereafter no Commissions of like nature may issue forth to any Person or Persons whatsoever*

ſoever to be Executed as aforeſaid, leſt by colour of them, any of your Majeſty's Subjects be Deſtroyed, or put to Death, contrary to the Laws and Franchiſe of the Land.

11. *All which they moſt humbly pray of your moſt Excellent Majeſty,* as their Rights and Liberties, *according to the Laws and Statutes of this Realm; and that your Majeſty would alſo vouchſafe to declare, That the Awards, Doings and Proceeding to the prejudice of your People in any of the Premiſes, ſhall not be drawn hereafter into Conſequence or Example: (2) And that your Majeſty alſo would be graciouſly pleaſed, for the further Comfort and Safety of your People, to declare your Royal Will and Pleaſure, that in the things aforeſaid all your Officers and Miniſters ſhall ſerve you according to the Laws and Statutes of this Realm, as they tender the Honour of your Majeſty, and the Proſperity of this Kingdom.*

Which Petition being Read the 2d of *June*, 1682. the King's Anſwer was thus delivered unto it:

The King willeth that Right be done according to the Laws and Cuſtoms of this Realm, and that the Statutes be put in due Execution, that his Subjects may have no cauſe to complain of any Wrong or Oppreſſions, contrary to their juſt Rights and Liberties; to the Preſervation whereof, he holds himſelf in Conſcience, as well as obliged, as of his Prerogative.

But this Anſwer not giving Satisfaction, the King was again Petitioned unto, That he would give a full and ſatisfactory Anſwer to their Petition in full Parliament,— Whereupon the King in Perſon, upon the 7th of *June*, made this Second Anſwer;

My Lords and Gentlemen,

THE Anſwer I have already given you, was made with ſo good Deliberation, and approved by the Judgment of ſo many wiſe Men, that I could not have imagined, but that it ſhould have given you full Satisfaction, but to avoid all ambiguous Words, and to ſhew you, that there is no Doubleneſs in my meaning, I am willing to pleaſe you in Words, as well as in Subſtance; read your Petition, and you ſhall have an Anſwer, that I am ſure will pleaſe you. And

And then causing the Petition to be distinctly Read by the Clerk of the Crown, the Clerk of the Parliament read the King's Answer thereto in these Words;

Soit Droit Fait, come est Desire.

Which is, *Let Right be Done, as is Desired.* This Answer, and the manner of Confirming this Law, I have the rather Recited, because the King's Answer, and Circumstances relating thereunto, were wholly left out in the Printed Book of Statutes.

The Petition it self is so plain, that there needs no Comment thereon, only the Reader may observe, That the things therein mentioned, were the *Ancient Rights of the People*, and therefore they expresly Demand them of the King, *as their Rights and Liberties.*

In the next place we shall add, the Excellent *Habeas Corpus* Act, because relating to the same Subject, *viz.* The Freeing the Subject from causels, tedious, and Arbitrary Imprisonments.

Anno Tricesimo primo Caroli Secundi Regis.

CHAP II.

An Act for the better Securing the Liberty of the Subject, and for prevention of Imprisonments beyond Seas, commonly called the *Habeas Corpus* Act.

I. WHereas great Delays have been used by Sheriffs, Goalers, and other Officers, to whose Custody any of the Kings Subjects have been committed for Criminal, or supposed Criminal matters, in making Returns of Writs of Habeas Corpus to them directed, by standing out an Alias, and Pluries, Habeas Corpus, and sometimes more, and by other shifts, to avoid their yielding Obedience to such Writs, contrary to their Duty, and the known Laws of the Land, whereby many of the Kings Subjects have been, and hereafter may be long detained in Prison, in such Cases whereby Law they are Bailable, to their great Charge and Vexation.

II. For the prevention whereof, and the more speedy Relief of all Persons Imprisoned for any such Criminal, or supposed Crimina

Criminal matters: (2.) Be it Enacted by the Kings moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons, in this preſent Parliament aſſembled, and by the Authority thereof, That whenſoever any perſon or perſons, ſhall bring any Habeas Corpus directed unto any Sheriff, or Sheriffs, Goaler, Miniſter, or perſon whatſoever, for any perſon in his or their Cuſtody, and the ſaid Writ ſhall be ſerved upon the ſaid Officer, or left at the Goal or Priſon, with any of the under Officers, under Keepers, or Deputy of the ſaid Officers or Keepers, that the ſaid Officer or Officers, his or their under Officers or Keepers or Deputies, ſhall within Three Days after the ſervice thereof, as aforeſaid, (unleſs the Commitment aforeſaid were for Treaſon or Felony, plainly and ſpecially expreſſed in the Warrant of Commitment) upon payment or tender of the Charges of bringing the ſaid Priſoner to be Aſcertained by the Judges, or Court that Awarded the ſame, and Endorſed upon the ſaid Writ, not exceeding Twelve-pence per Mile, and upon ſecurity given by his own Bond, to pay the Charges of carrying back the Priſoner, if he ſhall be Remanded, by the Court or Judge, to which he ſhall be brought according to the true intent of this preſent Act, and that he will not make any Eſcape by the way, make Return of ſuch Writ. (3.) And bring or cauſe to be brought the Body of the party ſo Committed or Reſtrained, unto, or before, the Lord Chancellor, or Lord Keeper of the Great Seal of England, for the time being, or Judges or Barons of the ſaid Court, from whence the ſaid Writ ſhall Iſſue, or unto and before ſuch other perſon or perſons before whom the ſaid Writ is made returnable, according to the Command thereof. (4.) And ſhall then likewiſe certifie the true, Cauſes of his Detainer, or Impriſonment, unleſs the Commitment of the ſaid party be in any place beyond the diſtance of twenty Miles from the place or places where ſuch Court or perſons is or ſhall be Reſiding? And if beyond the diſtance of Twenty miles and not above One Hundred miles, within the ſpace of Twenty Days after ſuch the Delivery aforeſaid, and not longer.

III. And to the intent that no Sheriff, Goaler, or other Officer may pretend Ignorance of the Import of any ſuch Writ, (2.) Be it Enacted by the Authority aforeſaid, That all ſuch Writs ſhall be marked in this manner, Perſtatutum Triceſimo Primo Caroli Secundi Regis, and ſhall be Signed by the Perſon that Awards the ſame. 3. And if any perſon or perſons, ſhall be, or ſtand Committed or Detained, as aforeſaid, for any Crime, unleſs for Felony or Treaſon, plainly expreſſed in the Warrant of Commitment, in the Vacation time, and out of Term, it ſhall and may be Lawful to and for the perſon or perſons ſo Committed or Detained, other than perſons Convict or in Execution, by Legal Proceſs, or any One on his or their Behalf, to Appeal, or Complain to the Lord Chancellor, or Lord Keeper, or any one of His Majeſty's Juſtices, either of the one Bench or of the other, or the Barons

rons of the Exchequer of the Degree of the Coif. [3] And the ſaid Lord Chancellor, Lord Keeper, Juſtices, or Barons, or any of them, upon view of the Copy or Copies of the Warrant or Warrants of Commitment and Detainer, or otherwiſe upon Oath made, that ſuch Copy or Copies were denied to be given by ſuch perſon or perſons, or any on his, her, or their behalf, Atteſted and Subſcribed by Two Witneſſes, who were preſent at the Delivery of the ſame, to Award and Grant an Habeas Corpus under the Seal of ſuch Court, whereof he ſhall then be one of the Judges. [5.] To be directed to the Officer or Officers in whoſe Cuſtody the party ſo Committed or Detained, ſhall be Returnable immediately before the ſaid Lord Chancellor or Lord Keeper, or ſuch Juſtice, Baron, or any other Juſtice, or Baron, of the Degree of the Coif, or any of the ſaid Courts. [6.] And upon Service thereof as aforeſaid, the Officer or Officers, his or their under Officer, or under Officers, under Keeper or under Keepers, or Deputy, to whoſe Cuſtody the Party is ſo Committed, or Detained, ſhall within the time reſpectively before limited, bring ſuch Priſoner or Priſoners before the ſaid Lord Chancellor or Lord Keeper, or ſuch Juſtices, Barons, or one of them, before whom the ſaid Writ is made Returnable, and in caſe of his Abſence, before any other of them, with the return of ſuch Writ, and the true Cauſes of the Commitment and Detainer. [7] And thereupon within two Days after, the Party ſhall be brought before them, the ſaid Lord Chancellor, or Lord Keeper, or ſuch Juſtice, or Baron before whom the Priſoner ſhall be brought as aforeſaid, ſhall Diſcharge the ſaid Priſoner from his Impriſonment, taking his or their Recognizance, with one or more Surety or Sureties in any Sum, according to their Diſcretion, having regard to the Quality of the Priſoner, and Nature of the Offence, for his or their Appearance in the Court of King's-Bench the Term following, or at the next Aſſizes, Seſſions, or general Goal-Delivery of and for ſuch County, City, or Place, where the Commitment was, or where the Offence was Committed, or in ſuch other Court where the ſaid Offence is properly Recognizable, as the Caſe ſhall require, and then ſhall Certify the ſaid Writ with the Return thereof, and the ſaid Recognizance or Recognizances into the ſaid Court, where ſuch Appearance is to be made; [8] Unleſs it ſhall appear, unto the ſaid Lord Chancellor, or Lord Keeper, or Juſtice, or Juſtices, Baron or Barons, that the Party ſo Committed is Detained upon a Legal Proceſs, Order, or Warrant out of ſome Court that hath Juriſdiction of Criminal matters, or by ſome Warrant Signed and Sealed, with the hand and Seal of any of the ſaid Juſtices or Barons, or ſome Juſtice or Juſtices of the Peace, for ſuch matter or offences, for the which by the Law the Priſoner is not Bailable.

IV. Provided always, and be it Enacted, That if any Perſon ſhall have willfully neglected by the ſpace of Two whole Terms after his Impriſonment, to pray a Habeas Corpus for his Inlargement,

ment, such person so willfully Neglecting, shall not have an Habeas Corpus to be granted in Vacation time, in pursuance of this Act

V. Be it further Enacted by the Authority aforesaid, That if any Officer or Officers, his or their under Officer, under Officers, under Keeper, or under Keepers, or Deputy, shall Neglect or Refuse to make the Returns aforesaid, or to bring the Body or Bodies of the Prisoners, according to the Command of the said Writ, within the Respective times aforesaid, or upon Demand made by the Prisoner, or Person in his Behalf, shall Refuse to Deliver, or within the space of Six Hours after Demand, shall not deliver to the Person so demanding, a true Copy of the Warrant or Warrants of Commitment and Detainer of such Prisoner, which he or they are hereby Required to deliver accordingly, all and every the Head Goalers and Keepers of such Prisons, and such other Person, in whose Custody the Prisoner shall be detained, shall for the First Offence, forfeit to the Prisoner, or Party Grieved, the Sum of One Hundred Pounds: (2) And for the Second Offence, the sum of Two Hundred Pounds, and shall and is hereby made incapable to hold or Execute his said Office: (3) The said Penalties to be Recorded by the Prisoner or Party Grieved, his Executors or Administrators, by any Action of Debt, Suit, Bill, Plaint, or Information, in any of the King's Courts at Westminster, wherein no Essogin, Protection, Priviledge, Injunction, Wager of Law, or Stay of Prosecution by non vult ulterius prosequi, or otherwise, shall be Admitted, or Allowed, or any more than One Imparlance. (4) And any Recovery or Judgment at the Suit of any party Grieved, shall be sufficient Conviction for the first Offence; and any after Recovery or Judgment at the Suit of a Party Grieved for any Offence after the First Judgment, shall be a sufficient Conviction to bring the Officers or Person within the said Penalty for the Second Offence.

VI. And for the prevention of unjust Vexation, by Reiterated Commitments for the same! (2) Be it Enacted by the Authority aforesaid, That no Person or Persons, which shall be Delivered or set at large upon any Habeas Corpus, shall at any time hereafter be again Imprisoned or Committed for the same Offence, by any Person or Persons whatsoever, other than by the Legal Order, and Process of such Court wherein he or they shall be Bound by Recognizance to appear, or other Court having Jurisdiction of the Cause. [3] And if any other Person or Persons shall knowingly contrary to this Act, Recommit or Imprison, or knowingly Procure or Cause to be Recommitted or Imprisoned for the same Offence, or pretended Offence, any Person or Persons Delivered or set at Large as aforesaid, or be knowingly Aiding or Assisting therein, then he or they shall Forfeit to the Prisoner or Party Grieved, the Sum of Five Hundered Pounds, any colourable Pretence or Variation in the Warrant or Warrants of Commitment notwithstanding, to be Recovered as aforesaid.

VIII. Pro-

VIII. Provided always, and be it further Enacted, That if any Person or Persons shall be Committed for High Treason or Felony, plainly and specially Expressed in the Warrant of Commitment, upon his Prayer or Petition in open Court, the first Week of the Term, or first Day of the Sessions of Oyer and Terminer, or General Goal-Delivery, to be brought to his Tryal, shall not be Indicted some time in the next Term, Sessions of Oyer and Terminer, or General Goal-Delivery after such Commitment, It shall and may be Lawful to and for the Judges of the Court of King's-Bench, and Justices of Oyer and Terminer, or General Goal-Delivery, and they are hereby required upon motion to them made in open Court the last day of the Term, Sessions, or General Goal-Delivery, either by the Prisoner, or any one in his Behalf, to set at Liberty upon Bail, unless it appear to the Judges and Justices upon Oath made, that the Witnesses for the King could not be produced the same Term, Sessions, or General Goal-Delivery. [2] And if any Person or Persons Committed as aforesaid, upon his Prayer or Petition in open Court, the first week of the Term, or first day of the Sessions of Oyer and Terminer, and General Goal-Delivery, to be brought to his Tryal, shall not be Indicted and Tryed the Second Term, Sessions of Oyer and Terminer, or General Goal-Delivery, after his Commitment, or upon his Tryal shall be Acquitted, he shall be Discharged from his Imprisonment.

VIII. Provided always, That nothing in this Act shall extend to Discharge out of Prison any person charged in Debt, or other Action, or with process in any civil Cause, but that after he shall be discharged of his Imprisonment for such his Criminal Offence, he shall be kept in Custody according to Law for such other Suit.

IX. Provided always, and be it Enacted by the Authority aforesaid, That if any person or persons, Subjects of this Realm, shall be committed to any prison, or in custody of any Officer or Officers whatsoever, for any Criminal or supposed Criminal matter, That the said person shall not be Removed from the said prison and Custody, into the custody of any other Officer or Officers? [2] Unless it be by an Habeas Corpus, or some other Legal Writ; or where the prisoner is delivered to the Constable or other Inferior Officer to carry such prisoner to some common-Goal: [3] Or where any person is sent by Order of any Judge of Assize, or Justice of the Peace to any common Work-house, or House of Correction: [4] Or where the prisoner is Removed from one prison or place to another within the same County, in order to his or her Tryal or Discharge in due course of Law: [5] Or in case of sudden Fire or Infection, or other Necessity. [6] And if any person or persons shall after such Commitment aforesaid, make out and Sign, or Countersign any Warrant or Warrants for such Removal aforesaid, contrary to this Act, as well he that makes or signs, or Countersigns such Warrant or Warrants, as the Officer or Officers, that obey or execute the same, shall

ſhall Suffer and Incur the Pains and Forfeitures in this Act beforementioned, both in the Firſt and Second Offence, Reſpectively, to be Recovered in manner aforeſaid, by the party Grieved.

X. Provided alſo, and be it further Enacted by the Authority aforeſaid, That it ſhall and may be Lawful to and for any priſoner and priſoners as aforeſaid, to move, and obtain his or their Habeas Corpus, as well out of the High Court of Chancery, or Court of Exchequer, as out of the Courts of King's-Bench, or Common-Pleas, or either of them. [2] And if the ſaid Lord Chancellour, or Lord Keeper, or any Judge or Judges, Baron or Barons for the time being, of the Degree of the Coif of any of the Courts aforeſaid in the Vacation time, upon view of the Copy or Copies of the Warrant or Warrants of Committment or Detainer, or upon Oath made, that ſuch Copy or Copies were denied as aforeſaid, ſhall deny any Writ of Habeas Corpus by this Act Required to be Granted, being moved for as aforeſaid, they ſhall ſeverally forfeit to the Priſoner or party Grieved, the Sum of Five Hundred Pounds, to be Recovered in manner aforeſaid.

XI. And be it Enacted, and declared by the Authority aforeſaid, That an Habeas Corpus according to the true intent and meaning of this Act, may be directed, and Run into any County Palatine, the Cinque Ports, or other priviledged Places within the Kingdom of England, Dominion of Wales, or Town of Berwick upon Tweed, and the Iſles of Jerſey, or Guernſey, any Law or Uſage to the contrary notwithſtanding.

XII. And for preventing Illegal Impriſonments in Priſons beyond Seas, [2.] Be it further Enacted by the Authority aforeſaid, That no Subject of this Realm, that now is, or hereafter ſhall be an Inhabitant or Reſident of this Kingdom of England, Dominion of Wales, or Town of Berwick upon Tweed, ſhall, or may be ſent priſoner into Scotland, Ireland, Jerſey, Guerneſy, Tangire, or into any parts, Gariſons, Iſlands, or places beyond the Seas, which are, or at any time hereafter, ſhall be within or without the Dominions of his Maieſty, his Heirs or Succeſſours. [3] And that every ſuch impriſonment is hereby Enacted and adjudged to be Illegal. [4] And that if any of the ſaid Subjects now is, or hereafter ſhall be ſo Impriſoned, every ſuch perſon or perſons ſo Impriſoned, ſhall and may for every ſuch Impriſonment, maintain by vertue of this Act, an Action or Actions of falſe Impriſonment, in any of his Majeſty's Courts of Record, againſt the perſon or perſons, by whom he or ſhe ſhall be ſo Committed, Detained, Impriſoned, ſent Priſoner, or Tranſported contrary to the true meaning of this Act, and againſt all or any perſon or perſons that ſhall Frame, Contrive, Write, Seal or Countерſign any Warrant or Writing, for ſuch Commitment, Detainer, Impriſonment or Tranſportation, or ſhall be adviſing, aiding, or aſſiſting the ſame, or any of them. [3] And the Plaintiff in every ſuch Action, ſhall have Judgment to Recover his Treble Coſts, beſides

beſides Damages ; which Damages ſo to be given, ſhall not be leſs than Five Hundred Pounds. (6) In which Action, no Delay, Stay or Stop of Proceeding, by Rules, Order, or Command, nor no Injunction, Protection, or Priviledge whatſoever, nor any more than One Imparlance ſhall be Allowed, Excepting ſuch Rule of the Court wherein the Action ſhall Depend, made in open Court, as ſhall be Thought in Juſtice Neceſſary, for ſpecial Cauſe to be expreſſed in the ſaid Rule. [7] And the perſon or perſons who ſhall knowingly frame, contrive, write, ſeal, or counterſign any Warrant for ſuch commitment, detainer, or tranſportation, or ſhall ſo commit, detain impriſon, or tranſport any Perſon, or Perſons, contrary to this Act, or be any ways adviſing, aiding or aſſiſting therein, being Lawfully Convicted thereof, ſhall be diſabled from thenceforth to bear any Office or Truſt or profit within the ſaid Realm of England, Dominion of Wales, or Town of Berwick upon Tweed, or any of the Illands, Territories or Dominions thereunto belonging. [8] And ſhall incur and ſuſtain the pains, penalties, and forfeitures, limited, ordained, and provided in and by the Statute of proviſion and premunire, made in the Sixteenth Year of King Richard the Second. [9] And be incapable of any pardon from the King, his Heirs or Succeſſors, of the ſaid Forfeitures, Loſſes or Diſabilities, or any of them.

XIII. Provided always, That nothing in this Act extend to give Benefit to any perſon who ſhall by Contract in Writing, agree with any Merchant or Owner, of any Plantation, or other perſon whatſoever, to be tranſported beyond the Seas, and receive Earneſt upon ſuch an Agreement, although that afterwards ſuch perſon ſhall Renounce ſuch Contract.

XIV. Provided always and be it Enacted, That if any perſon or perſons, lawfully Convicted of any Felony, ſhall in open Court pray to be tranſported beyond the Seas, and the Court ſhall think fit to leave him or them in Priſon for that purpoſe, ſuch perſon or perſons may be Tranſported into any parts beyond the Seas: This Act or any thing therein contained to the contrary, notwithſtanding.

XV. Provided alſo, and be it Enacted, That nothing herein contained, ſhall be Deemed, conſerved, or taken to extend to the Impriſonment of any Perſon before the firſt day of June, One Thouſand Six Hundred Seventy and Nine, or to any thing adviſed, procured, or otherwiſe done, relating to ſuch Impriſonment? Any thing herein contained to the Contrary notwithſtanding.

XVI. Provided alſo, That if any perſon or perſons, at any time reſident in this Realm, ſhall have committed any capital Offence in Scotland, or Ireland, or any of the Illands, or Foreign Plantations of the King, his Heirs, or Succeſſours, where he or ſhe ought to be tryed for ſuch Offence, ſuch perſon or perſons may be ſent to ſuch place, there to receive ſuch Tryal in ſuch manner as the ſame might have been uſed before the making of this Act, any thing herein contained to the contrary Notwithſtanding.

XVII. Provided

XVII. Provided always, and be it Enacted, That no person or persons, shall be Sued, Imprisoned, Molested, for the same within two Years at the most after such time wherein the Offence shall be Committed, in case the party Grieved shall not then be in prison, and if he shall be in prison, then within the space of two Years after the Decease of the person imprisoned, or his, or her delivery out of prison, which shall first happen.

XVIII. And to the intent no person may avoid his Tryal at the Assizes, or General Goal-Delivery, by procuring his Removal before the Assizes at such time as he cannot be brought back to receive his Tryal there? [2.] Be it Enacted, That after the Assizes proclaimed for that County where the prisoner is detained, no person shall be removed from the common Goal upon any Habeas Corpus granted in pursuance of this Act, but upon any such Habeas Corpus, shall be brought before the Judge of Assize in open Court, who is thereupon to do what to Justice shall appertain.

XIX. Provided nevertheless, That after the Assizes are ended, any person or persons detained may have his or her Habeas Corpus according to the Direction and Intention of this Act.

XX. And be it also Enacted by the Authority aforesaid, That if any Information, Suit, or Action shall be Brought, or Exhibited against any person or persons, for any Offence committed against the Form of this Law, it shall be Lawful for such Defendants to plead the General Issue, that they are not Guilty, or that they own Nothing, and to give such special matter in Evidence to the Jury, that shall Try the same, which matter being Pleaded, had been good and sufficient in Law to have Discharged the said Defendant or Defendents against the said Information, Suit, or Action, and the said matter shall then be as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth, or alledged the same matter in Bar, or Discharge of such Information, Suit, or Action.

XXI. And because many times persons charged with Petty-Treason or Felony, or as Accessaries thereunto are committed on Suspicion only, whereupon they are Bailable or not, according as the Circumstances making out that Suspition are more or less weighty, which are best known to the Justices of Peace that committed the Persons, and have the Examination before them, or to other Justices of the Peace in the County, [2] Be it therefore Enacted, That where any person shall appear to be committed by any Judge, or Justice of the Peace, and charged Accessary before the Fact, to any petty Treason or Felony, shall be plainly and specially expressed in the Warrant of Commitment, that such person shall not be Removed or Bailed by vertue of this Act, or in any other manner than they might have been before the making of this Act,

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The Comment.

THere are three things which the Law of *England* (which is a Law of Mercy) principally Regards and taketh care of, *viz. Life*, *Liberty*, and *Eſtate*. Next to a Man's Life, the neareſt thing that concerns him, is Freedom of his Perſon; for indeed, what is Impriſonment, but a kind of Civil Death? Therefore, ſaith *Forteſcue*, Cap. 42. *Angliæ Jura in omni Caſu Libertati dant favorem.* The Laws of *England* do, in **All Caſes**, favour Liberty.

Touching Commitments, and what is required to make a *Legal Mittimus*, ſee before, *Page* 20.

The Writ of *Habeas Corpus* is a Remedy given by the Common-Law, for ſuch as were unjuſtly detained in Cuſtody, to procure their Liberty: But before this Statute was rendered far leſs uſeful than it ought to be, partly by the Judges, pretending a Power to Grant, or deny the ſaid Writ at their pleaſure in many caſes, and eſpecially by the ill Practices of Sheriffs and Goalers, by putting the Priſoner to the Charge and Trouble of an *Alias* and *Pluries*, (that is a ſecond and third Writ, before they would obey the firſt, for there was no Penalty till the Third) and then at laſt, the Judges would oft-times alledge, That they could not take Bail, becauſe the Party was a *Priſoner of State*, &c. Therefore, to Remedy all thoſe Miſchiefs, this moſt wholeſome Law was provided, which we ſhall briefly indeavour to divide into its ſeveral Branches, and explain it to the meaneſt Capacities, ſince no Man is ſure, but one time or other, he may have occaſion to make uſe of it.

The Act concerneth either firſt, Perſons committed for ſome other Criminal, or ſuppoſed Criminal matter, beſides Treaſon or Felony, and theſe are to have an *Habeas Corpus* immediately. 2. Such who in their *Mittimus* are charged with Treaſon and Felony, and theſe ſhall have the benefit of the ſaid Writ, after the time herein limited. 1. If any Goaler, or Under-Keeper, ſhall not deliver a true Copy of the *Mittimus* within

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ſix hours after the Priſoner demands it, the Head-Goaler, or Keeper, forfeits to the Priſoner, for the firſt Offence, 100 *l.* for the ſecond Offence 200 *l.* and loſes his Place. Nor is there any Fee to be paid for the ſame, the Turn-key muſt deliver it at his Peril. And note, If the Priſoner ſhould be locked up, or none ſuffered to come at him, any Friend of his may demand the ſame on his behalf.

2. Whatever the Criminal matter be, If Treaſon or Felony be not expreſly charged, any Perſon on the Priſoner's behalf, carrying ſuch true Copy of the Commitment to the Lord Chancellor, or any one of the Judges or Barons of the Exchequer, or upon Oath made that a Copy was demanded and denied, he ſhall grant an *Habeas Corpus*, or forfeit 500 l. to the Priſoner. But note, The Requeſt muſt be made to ſuch Judge in Writing, and atteſted by two Witneſſes.

3. If the Sheriff, or Goaler, do not carry up the Priſoner, and return the true cauſes of his Detainour, within three days if under twenty Miles diſtance; or within ten days, if above twenty, and under an hundred Miles; or within twenty days, if above an hundred Miles, he forfeits 500 l. to the Priſoner.

Note, The Priſoner muſt pay the Charges of his carrying up; and the Judge, when he grants the Writ, may order how much, but it muſt not be above 12 *d.* a Mile.

If upon the Return of ſuch *Habeas Corpus*, it appear the Priſoner is not charged with Treaſon or Felony, ſpecially and plainly expreſſed, or for ſuch Matters as, by Law, are not Bailable, the Judge ſhall diſcharge the Priſoner upon Bail.

4. If a Perſon once ſo Bailed out, ſhall again be Impriſoned for the ſame Offence, thoſe that do it forfeit 500 l.

5. If there be High Treaſon or Felony, plainly and ſpecially expreſſed, [That is, not only Generally, for Treaſon or Felony, but Treaſon in Conſpiring to kill the Queen, or in Counterfeiting the Queen's Coin, or Felony, for ſtealing the Goods of ſuch an one, to ſuch

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value, &c.] Then the Prisoner cannot have his *Habeas Corpus*, till first he has, on the first Week of the Term, or first Day of Sessions of *Oyer* and *Terminer*, or General Goaladelivery, petioned in open Court, to be brought to his Trial; and then if he be not brought to Trial the next Term or Sessions following, on the last Day thereof, he shall be Bailed; and if not Indicted the second Term or Sessions, shall be Discharged.

6. This Act extends to all places within *England* and *Wales*; the *Tower* cannot be supposed to be exempted, nor *Windsor-Castle*, nor any such Royal Forts, for the Words are general. And besides, there is a special Act of Parliament, that unites the King's Castles to the Counties wherein they stand, there having been it seems some Pretensions and ill Practices, to hold them distinct, that therein they might detain Men Prisoners against Law, and not admit any Writ to inlarge them. For Remedy whereof it was thus Enacted:

Anno 13 Rich. Secundi.

Item. IT *is Ordained and Assented, That the King's Castles and Goals, which were want to be joyned to the Bodies of the Counties, and be now severed, shall be rejoyned to the same Counties.*

Lastly, No Person shall be sent Prisoner out of *England* or *Wales*, into *Scotland*, *Ireland*, *Jersey*, *Guernsey*, *Tangier*, or any other place beyond the Seas.

The Proviso's, and other Clauses of this Act, may be easily apprehended by the meanest Capacities.

And, As the Law provides thus for our Liberty, so it takes care, that those that are in Custody shall not be Abused or Oppressed; to which purpose I shall here insert as much as is material and necessary to be known by all Persons, who are so unhappy to be Prisoners, out of the Statute of the 22d and 23d *Car.* 2. cap. 20. The Words whereof are as follows.

WHereas *Persons that are under Arrests, or committed to the Custody of Sheriffs, Bailiffs, Goalers, Keepers of Prisons or Goals, are much abused and wronged by Extorting*

torting of great Fees, Rewards, and other Exactions, and put to great Expences under pretences of Favour, or otherwise, whereby they are greatly Oppressed, and many times Ruined in their Estates. (2) For Remedy thereof be it Enacted, by the Authority aforesaid, That if any Under-Sheriff, Bailiff, Serjeant at Mace, or other Officer or Minister whatsoever, shall at any time, or times hereafter, have in his or their Custody, any Person or Persons, by virtue or colour of any Writ, Process, or other Warrant whatsoever, it shall not be lawful for such Officer or Officers, to convey or carry, or cause to be conveyed or carried, the said Person or Persons, to any Tavern, Ale-house, or other Publick Victualling Drinking-house, without the free and voluntary Consent of the said Person or Persons, so as to charge such Prisoner with any Sum of Money for any Wine, Beer, Ale, Victuals, Tobacco, or any other things whatsoever, but what the said Person or Persons shall call for, of his, her, or their own accord. (3) And shall not demand, take, or receive, or cause to be demanded, taken, or received, directly or indirectly, any other, or greater Sum or Sums, than what, by Law, ought to be taken or demanded, for such Arrest, taking, or waiting (until such Person or Persons shall have procured an Appearance, found Bail, agreed with his or their Adversaries, or be sent to the proper Goal belonging to that County, City, Town or Place, where such Arrest or taking shall be.) (4) Nor take and exact any other Reward or Gratuity for so keeping the said Person or Persons out of the Goal or Prison, than what he, she or they, shall or will, of his, her, or their own accord, voluntarily and freely give. (5) Nor take, nor receive any other, or greater Sum or Sums, for each Nights Lodging, or other Expences, than what is reasonable and fitting in such cases, or shall be so adjudged by the next Justice of the Peace, or at the next Quarter-Sessions. (6) And shall not cause, or procure the said Person or Persons, to pay for any other Wine, Beer, Ale, Victuals, Tobacco, or other things, than what the said Person or Persons shall voluntarily, freely, and particularly call for.

And that every Under-Sheriff, Goaler, Keeper of Prison, or Goal, and every Person or Persons whatsoever, to whose Custody any Person or Persons shall be delivered or committed, by virtue of any Writ of Process, or any pretence whatsoever,

whatsoever, shall permit or suffer the said Person or Persons at his and their Will and Pleasure, to send for, and have any Beer, Ale, Victuals, and other necessary Food, where, and from whence they please: And also to have, and use such Bedding, Linnen, and other things, as the said Person or Persons shall think fit, without any purloyning, detaining, or paying for the same, or any part thereof; nor shall demand, take or receive, of the said Person or Persons, any Commitment, Release or Discharge; or for his, her, or their Chamber-Rent, than what is allowable by Law, until the same shall be settled by Three Justices of the Peace, whereof one to be of the Quorum, *of each particular County, City, and Town-Corporate, in their several Precincts; and for the City of* London, *and Counties of* Middlesex *and* Surrey, *the Two Lord-Chief-Justices of the* King's-Bench *and* Common Pleas, *and the Lord Chief Baron, or any Two of them, and the Justices of the Peace of the same, in their several Jurisdictions.*

And likewise that the said Lord Chief Justice, Lord Chief Baron, and Justices of the Peace, in their several Jurisdictions, and all Commissioners for Charitable Uses, do their best Endeavours, and Diligence, to Examine, and find out the several Legacies, Gifts and Bequests, bestowed and given for the Benefit and Advantage of the poor Prisoners for Debt, in the several Goals and Prisons in this Kingdom, and to send for any Deeds, Wills, Writings, and Books of Accompts whatsoever, and any Person or Persons, concerned therein, and to Examine them upon Oath, to make true Discovery thereof, (which they have full Power and Authority hereby to do) and the same so found out, and ascertained, to order and settle in some manner and way, that the Prisoners hereafter may not be Defrauded, but receive the full Benefit thereof, according to the true Intent of the Donors.

And that these Accounts of the several Legacies Gifts and Bequests, given and bestowed upon the several Prisoners for Debt, within this Kingdom, and the several Rates of Fees, and the future Government of Prisons, be Signed and Confirmed by the Lord Chief Justices, and the Lord Chief Baron, or any two of them for the time being, and the Justices of the

Peace in London, Middlesex *and* Surrey; *and by the Judges for the several Circuits, and Justices of the Peace for the time being, in their several Precincts, and fairly written, and hung up in a Table in every Goal and Prison, before the first Day of* November, 1671. *and likewise be Registred by each, and every Clerk of the Peace within his or their particular Jurisdiction: And after such Establishment, no other or greater Fee or Fees than shall be so Established, shall be Demanded or Received.*

And whereas it is become the common Practice of Goalers, and Keepers of Newgate, *the* Gate-house *at* Westminster, *and sundry other Goals and Prisons, to Lodge together in one Room, or Chamber and Bed, Prisoners of Debt and Felons, whereby many times honest Gentlemen, Trades men and others, Prisoners for Debt, are disturbed and hindered in the Night-time from their natural Rest, by reason of their Fetters and Irons; and otherwise much offended and troubled by their lewd and prophane Language and Discourses, with most horrid Cursing and Swearing (much accustomed to such Persons)* (2) *Be it Enacted by the Authority aforesaid, That it shall not be Lawful hereafter, for any Sheriff, Goaler, or Keeper of any Goal or Prison, to put, keep or lodge Prisoners for Debt and Felons, together in one Room or Chamber; but that they shall be put, kept, and lodged separate and apart one from another, in distinct Rooms.* (3) *Upon pain that he, she, or they, which shall offend against this Act, or the true Intent and Meaning thereof, or any part thereof, shall forfeit and lose his or her Office, Place or Imployment, and shall forfeit treble Damages to the Party grieved, to be Recovered by Virtue of this Act, any Law, Statute, Usage or Custom to the contrary in any wise notwithstanding.*

And to the end that English-men may more intirely enjoy their due Freedoms, the Prudence of our Legislators have thought fit, from time to time, to remove Incroachments thereupon, though under Pretence of Jurisdictions and Courts of Justice; and to prohibit any Exorbitant Arbitrary Power for the future, but that all things may be left to the calm and equal Proceedings of Law; and that most excellent

Method

Method of Trial by *Juries*, one of the principal Bulwarks of *England*'s Liberties. For an Instance hereof; take the Act following.

An Act for Regulating of the Privy-Council, and for taking away the Court commonly called the *Star-Chamber*.

WHereas by the Great Charter, many times confirmed in Parliament, it is Enacted, That no Freeman shall be taken or Imprisoned, or Disseized of his Freehold or Liberties, or Free Customs, or be Out-lawed, or Exiled, or otherwise destroyed; and that the King will not pass upon him, or condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. (2) And by another Statute made in the Fifth Year of the Reign of King Edward, it is Enacted, That no Man shall be Attached by any Accusation, nor forejudged of Life or Limb, nor his Lands, Tenements, Goods nor Chattels, seized into the King's Hands, against the Form of the Great Charter, and the Law of the Land. (3) And by another Statute made in the Five and Twentieth Year of the Reign of the same King Edward the Third, it is Accorded, Assented, and Established, That none shall be taken by Petition, or Suggestion, made to the King, or to his Council, unless it be by Indictment, or Presentment of good and lawful People of the same Neighbourhood, where such Deeds be done, in due manner, or by Process made by Writ Original at the Common-Law; and that none be put out of his Franchise or Freehold, unless he be duly brought in to Answer, and fore-judged of the same by the course of the Law: And if any thing be done against the same, it shall be Redressed, and holden for none. (4) And by another Statute made in the Eight and Twentieth Year of the Reign of the same King Edward the Third, it is, amongst other things, Enacted, That no Man, of what Estate and Condition soever he be, shall be put out of his Lands and Tenements, nor taken, nor Imprisoned, nor Disinherited, without being brought in to Answer by due Process of Law. (5) And by another Statute made in the Two and Fortieth Year of the

Reign of the said King *Edw.* the Third, it is Enacted, *That no man be put to Answer without Presentment before Justices or matter of Record, or by Due Process and Writt, Original, according to the Old Law of the Land: And if any thing be done to the contrary, it shall be Void in Law, and holden for Error.* (6) And by another Statute, in the six and thirtieth Year of the Reign of the same King *Edward* the Third, it is among other things Enacted, *That all Pleas, which shall be pleaded in any Courts, before any of the King's Justices, or in his other Places, or before any of his other Ministers, or in the Courts and places of any other Lords within the Realm, shall be Entred and Enrolled in Latin.* (7) *And whereas by the Statute made in the Third Year of King* Henry *the Seventh, Power is given to the Chancellor, the Lord Treasurer of* England, *for the Time being, and the Keeper of the King's Privy Seal, or Two of them, calling unto them a Bishop, and a Temporal Lord, of the King's Most Honourable Council, and the Two Chief Justices of the* Kings'-Bench *and* Common-pleas *for the time being, or other Two Justices in their Absence, to proceed as in that Act is expressed, for the Punishment of some particular Offences therein mentioned.* (8) *And by the Statute made in the one and twentieth Year of King* Henry *the Eighth, the President of the Council is Associated to joyn with the Lord-Chancellor, and other Judges in the said Statute of the Third of* Henry *the Seventh mentioned.* (9) *But the said Judges have not kept themselves to the Points Limited by the said Statute but have undertaken to punish where no Law doth warrant, and to make Decrees for things, having no such Authority, and to Inflict heavier Punishments, than by any Law is warranted.*

2. *And forasmuch as all Matters Examinable or Determinable before the said Judges, or in the Court commonly called the* Star-Chamber, *many have their proper Remedy and Address, and their due Punishment and Correction by the Common Law of the Land, and in the ordinary Course of justice elsewhere.* (2) *And forasmuch as the Reasons and Motives, inducing the Erection and Continuance of that Court do now cease:* (3dly) *And the Proceedings, Censures, and Decrees of that Court, have by Experience been found to*

be

be an intollerable Burthen to the Subject, and the means to introduce an Arbitrary Power and Government. (4) And forasmuch as the Council Table hath of late times assumed unto it self, a Power to intermeddle in Civil, and Matters only of private Interest between Party and Party, and have adventured to determine of the Estates and Liberties of the Subjects, contrary to the Law of the Land, and the Rights and priviledges of the Subject, by which great and manifold Mischiefs and Inconveniencies have arisen and happened, and much Incertainty, by means of such proceedings, hath been conceived, concerning Mens Rights and Estates; for settling whereof, and preventing the like in time to come.

3. *Be it Ordained and Enacted by the Authority of this present Parliament, That the said* Court, *commonly called the* Star-Chamber, *and all Jurisdiction, Power and Authority, belonging unto, or exercised in the same Court, or by any the Judges, Officers or Ministers thereof, be from the First Day of* August, *in the Year of Our Lord God, One Thousand Six Hundred Forty and One, clearly and absolutely dissolved, taken away and determined. (2) And that from the said First Day of* August, *neither the Lord-Chancellor, or Keeper of the Great Seal of* England, *the Lord Treasurer of* England, *the Keeper of the King's Privy Seal, or President of the Council, nor any Bishop, Temporal Lord, Privy Councellor, or Judge, or Justice whatsoever, shall have any Power or Authority to hear examine or determine any matter or thing whatsoever in the said Court, commonly called the* Star-Chamber, *or to make, pronounce, or deliver, any Judgment, Sentence, Order or Decree; or to do any judicial or Ministerial Act in the said Court. (3) And that all and every Act and Acts of Parliament, and all and every Article, Clause, and Sentence in them, and every of them, by which any Jurisdiction, Power or Authority is given, Limited or appointed unto the said Court, commonly called the Star-chamber, or unto all, or any the Judges, Officers, or Ministers thereof, or for any Proceedings to be had or made in the said Court, or for any matter or thing to be drawn into Question, Examined or Determined there shall for so much as concerneth the said Court of Star Chamber, and the Power and Authority thereby given unto it, be from the first Day of*

of August *Repealed and Absolutely Revoked and made void.*

4. *And be it likewise Enacted, That the like Jurisdiction now used and exercised in the Court, before the President and Council in the* Marches *of* Wales: (2) *And also in the Court, before the President and Council Established in the Northern Parts* (3) *And also in the Court commonly called, the Court of the Dutchy of* Lancaster, *held before the Chancellor and Council of that Court.* (4) *And also in the Court of Exchequer of the County Palatine of* Chester, *held before the Chamberlain and Council of that Court.* (5) *The like Jurisdiction being exercised there, shall from the said first day of* August, *One thousand six hundred Forty and one, be also Repealed and Absolutely Revoked, and made void, any Law, Prescription, Custom or Usuage, or the said Statute made in the thied year of King* Henry *the Seventh, or the Statute made in the one and twentieth of* Henry *the Eighth, or any Act or Acts of Parliament heretofore had or made, to the contrary thereof in any wise notwithstanding.* (6) *And that from henceforth no Court, Council, or place of Judicature shall be Erected, Ordained, Constituted or Appointed, within this Realm of* England, *or Dominion of* Wales, *which shall have, use or Exercise, the same, or the like Jurisdiction, as is or hath been used, practised, or exercisnd in the said* Court of Star-Chamber.

5. *Be it likewise Declared, and Enacted by the Authority of this present Parliament, That neither his Majesty, nor his Privy Council, have, or ought to have, any Jurisdiction, Power or Authority by English Bill, Petition, Articles, Libels, or any other Arbitrary way whatsoever, to examine or draw into questions, determine or dispose of the Lands, Tenements, Hereditaments, Goods or Chattels, of any of the Subjects of this Kingdom; but that the same ought to be tryed and determined in the ordinary Courts of Justice, and by the ordinary course of the Law.*

6. *And be it further provided and Enacted, That if any Lord Chancellor, or Keeper of the Great Seal of* England, *Lord Treasurer, Keeper of the King's Privy Seal, President of the Council, Bishop, Temporal Lord, Privy-Councellor, Judge or Justice whatsoever, shall offend, or do any thing contrary to the Purport, true Intent and Meaning of this Law, Then he*

or they shall, for such Offence, forfeit the Sum of Five hundred Pounds of lawful Money of England, unto any Party grieved, his Executors or Administrators, who shall really prosecute for the same, and first obtain Judgment thereupon, to be recovered in any Court of Record at Westminster, by Action of Debt, Bill, Plaint, or Information, wherein no Essoign, Protection, Wager of Law, Aid-prayer, Priviledge, Injunction, or Order of Restraint, shall be in any wise prayed, granted or allowed; nor any more than one Imparlance. (2) And if any Person, against whom any such Judgment or Recovery shall be had as aforesaid, shall, after such Judgment or Recovery, offend again in the same, then he or they, for such Offence, shall forfeit the Sum of One thousand Pounds of lawful Money of England, unto any Party grieved, his Executors or Administrators, who shall really prosecute for the same, and first obtain Judgment thereupon, to be recovered in any Court of Record at Westminster, by Action of Debt, Bill, Plaint, or Information, in which no Essoign, Protection, Wager of Law, Aid-prayer, Priviledge, Injunction or Order of Restraint, shall be in any wise prayed, granted or allowed; nor any more than one Imparlance. (3) And if any Person, against whom any such second Judgment or Recovery shall be had as aforesaid, shall, after such Judgment or Recovery, offend again in the same kind, and shall be therefore duly convicted by Indictment, Information, or any other lawful way or means, that such Person so convicted, shall be from thenceforth disabled, and become, by vertue of this Act, Incapable, ipso facto, to bear his and their said Office and Offices respectively. (4) And shall be likewise disabled to make any Gift, Grant, Conveyance, or other Disposition of any of his Lands, Tenements, Hereditaments, Goods or Chattels; or to make any Benefit of any Gift, Conveyance or Legacy, to his own use.

7. And every Person so offending, shall likewise forfeit and lose to the Party grieved, by any thing done, contrary to the true intent and meaning of this Law, his treble Damages, which he shall sustain and be put unto, by means or occasion of any such Act or thing done, the same to be recovered in any of His Majesty's Courts of Record at Westminster, by Action of Debt, Bill, Plaint, or Information,

wherein no Essoign, Protection, Wager of Law, Aid-prayer, Priviledge, Injunction, or Order of Restraint, shall be in any wise prayed, granted or allowed, nor any more than one Imparlance.

8. *And be it also provided and Enacted, That if any Person shall hereafter be Committed, Restrained of his Liberty, or suffer Imprisonment, by the Order or Decree of any such* Court of Star-Chamber, *or other Court aforesaid, now, or at any time hereafter, having, or pretending to have, the same, or like Jurisdiction, Power or Authority, to Commit or Imprison as aforesaid. (2) Or by the Command or Warrant of the King's Majesty, His Heirs and Successors in their own Person; or by the Command or Warrant of the Council-board; or of any of the Lords, or others of His Majesty's Privy-Council. (3) That in every such case, every Person so Committed, Restrained of his Liberty, or suffering Imprisonment, upon demand or motion made by his Council, or other imployed by him for that purpose, unto the Judges of the Court of King's-Bench, or Common-Pleas, in open Court, shall without delay, upon any Pretence whatsoever, for the Ordinary Fees usually paid for the same, have forthwith granted unto him a Writ of* Habeas Corpus, *to be directed generally unto all and every Sheriff, Goaler, Minister, Officer, or other Person, in whose Custody the Person Committed or Restrained shall be. (4) And the Sheriffs, Goaler, Minister, Officer, or other Person, in whose Custody the Person so Committed or Restrained shall be, shall, at the Return of the said Writ, and according to the command thereof, upon due and convenient notice thereof given unto him, at the Charge of the Party who requireth or procureth such Writ, and upon Security by his own Bond given, to pay the Charge of carrying back the Prisoner, if he shall be remanded by the Court to which he shall be brought; as in like cases hath been used, such Charges of bringing up, and carrying back the Prisoner, to be always Ordered by the Court, if any difference shall arise thereabout, bring or cause to be brought, the Body of the said Party so committed or restrained unto, and before the Judges or Justices of the said Court, from whence the same Writ shall Issue, in open Court. (5) And shall then likewise certifie the true Cause of such his Detainour or Imprisonment,*

ment, and thereupon the Court, within three Court-days after such Return, made and delivered in open Court, shall proceed to Examine and Determine, whether the cause of such Commitment appearing upon the said Return, be Just and Legal, or not, and shall thereupon do what to Justice shall appertain, either by Delivering, Bailing, or Remanding the Prisoner. (6) *And if any thing shall be otherwise wilfully done, or omitted to be done by any Judge, Justice, Officer, or other Person aforementioned, contrary to the Direction and true Meaning hereof, then such Person so offending, shall forfeit to the Party grieved, his treble Damages, to be recovered by such means, and in such manner, as is formerly in this Act limitted and appointed, for the like Penalty to be Sued for and Recovered.*

9. *Provided always, and be it Enacted, That this Act, and the several Clauses therein contained, shall be taken and Expounded to Extend only to the* Court of Star-Chamber. (2) *And to the said Courts holden before the President and Council in the Marches of* Wales. (3) *And before the President and Council in the Northern parts.* (4) *And also to the Court commonly called the Court of the Dutchy of* Lancaster, *holden before the* Chancellour *and Council of that* Court. (5) *And also in the court of Exchequer, of the county Palatine of* Chester, *held before the Chamberlain, and Council of that court.* (6) *And to all Courts of like Jurisdiction, to be hereafter Erected, Ordained, Constituted, or Appointed as aforesaid; and to the Warrants and Directions of the* Council-board, *and to the* Commitments, *Restraints and Imprisonments of any Person or Persons made, commanded or awarded by the King's Majesty, His Heirs or Successors in their own Person, or by the Lords and others of the Privy-Council, and every one of them.*

And lastly, Provided and be it Enacted, That no Person or Persons shall be Sued, Impleaded, Molested, or Troubled, for any Offence against this present Act, unless the Party supposed to have so Offended, shall be Sued or Impleaded for the same, within two years, at the most, after such time, wherein the said Offence shall be committed.

The Comment.

THE Court of *Star-Chamber* (ſo called, becauſe held in a Chamber at *Weſtminſter*, the Roof of which is garniſh'd with Golden *Stars*) was not originally Erected, but confirmed and eſtabliſhed by the Statute of 3 *H.* 7. cap. 1. For there had before been ſome ſuch Juriſdiction, as *Coke* obſerves 4 *Inſtit.* Fol. 62. yet there is reaſon to believe, that it grew up rather by Connivance and Uſurpation, than any due courſe of Law. The Crimes it pretended to puniſh, were the Exorbitant Offences of Great Men, (whom Inferior Judges and Jurors (tho' they ſhould not) would in reſpect of their Greatneſs, be afraid to offend) Bribery, Extortion, Maintenance, Champerty, Imbracery, Forgery, Perjury, Libelling, Challenges, Duels, *&c.* Their Proceedings were by Engliſh Bill, and Proceſs under the Great Seal; and the Puniſhments by them Inflicted, were *Fines*, *Impriſonment*, *Pillory Cutting off Ears*, &c. But whatever Pretences there were, for the ſetting up this Court at firſt, 'tis certain it was made uſe of as a Property of Arbitrary Power, to Cruſh any whom the Ruling Miniſters and Favourites had a mind to deſtroy; and indeed there were Three things in the very nature of this Court, which were deſtructive to the Original Conſtitution of our Engliſh Government and Liberties. 1. They proceeded with *Juries*. 2. They pretended to a Power to Examine Men upon their Oaths, touching Crimes by them ſuppoſed to be committed, which is contrary to all Law and Reaſon; For, *Nemo tenetur ſeipſum Accuſare.* No Man is bound to accuſe himſelf. 3. The Judges of this Court proceeded by no known Law or Rules, but were left at Liberty to Act Arbitrarily, and according to their own Pleaſures: whereas the Law of *England* hates to leave any ſuch, an unlimited Power, but as it marks out the ſeveral ſpecies of Crimes, ſuch or ſuch an Act ſhall be Treaſon, this Felony, that Petty-Larceny, *&c.* So it awards certain and poſitive Puniſhment, proportionate

to

to each of them. Therefore this Court being found a Grievance to the Subject, was by this Act dissolved and taken away.

And to the intent nothing of the like kind, should, by any other name, be practised for the future, it is declared and Enacted, That the King and his Privy-Council, shall not question or dispose of the Lands or Goods of any Subjects: And if they do, each Privy-Counsellor present, forfeits 500 *l.* to the Party grieved.

A Clause in the Act of 31 *Cor.* 2. Cap. 1.

WHereas by the Laws and Customs of this Realm, the Inhabitants thereof cannot be compelled, against their Wills, to receive Souldiers into their Houses, and to sojourn them there, Be it Declared and Enacted by the Authority aforesaid, That no Officer, Military or Civil, nor any other Person whatsoever, shall from henceforth presume to Place, Quarter or Billet, any Souldier or Souldiers, upon any Subject or Inhabitant of this Realm, of any Degree, Quality or Profession whatever, without his consent: And that it shall and may be lawful, for every such Subject and Inhabitant, to refuse to Sojourn or Quarter any Souldier or Souldiers, notwithstanding any Command, Order, Warrant, or Billeting whatsoever.

Having thus Collected together divers of the most remarkable and advantagious of our Laws, whereby the Liberties of English-men are guarded and secured: since the best of Laws are but insignificant Cyphers, if not Honestly put in Execution; and since, in the Execution of our Laws, *JURIES* are mainly concern'd, who, if Ignorant of their Duty, or Corrupt, or Overawed, and not daring to make use of that just Power, wherewith the Law hath invested and intrusted them, may give up all those precious Priviledges, and subject us to the worst kind of Slavery, under pretence of Law: Therefore here in the last place, for the Information of my Honest Country-men, the Free-holders of *England*, and others, who in Corporations are daily call'd to this important Service, I shall subjoyn a brief Discourse of *JURIES*.

SECT. I.

SECT I.

Of the Advantage English-men enjoy by this Trial by Juries, above any other Nations under Heaven.

IT is one of the miserable Follies of Depraved Humane Nature, that it commonly slights present Enjoyments, and rarely rates the good things it possesses at their true value, till 'tis deprived of them. This grand Priviledge of Tryals *per pais*, by our Country, that is, by *JURIES*, as it seems to have been as Ancient as the Government, or first Form of Policy in this Island; for it was not unknown to the ancient *Brittains* (as appears by their Books and Monuments of Antiquity) practised by the *Saxons* [see King *Ethelred*'s Laws in *Lambert*, p. 218. and Coke 1 Part *Instit.* Fol. 155.] and confirmed since the Invasion of the *Normans*, by *Magna Charta*, as you have heard, and continual Usage; so it is a thing in the highest Moment, and an essential Felicity, to all English Subjects. For look abroad in *France*, *Spain*, *Italy*, or, indeed, (almost) where you will, and observe the miserable Condition of the Inhabitants, either intirely subjected to the Arbitrary Lusts of Tyrants, who Plunder, Dismember or Slay them, according as the Humour takes them, and many times without the least Provocation, meerly for Sport, and to gratify a Savage Cruelty; Or at best, you will behold them under such Laws, as render their Lives, Liberties and Estates, liable to be disposed of, at the Discretion of Strangers appointed their Judges, most times Mercenary, and Creatures of Prerogative; sometimes Malicious and Oppressive, and too often Partial and Corrupt. Or suppose them never so Just and Upright, yet still has the Subject no Security against Subornations, and the Attacks of malicious, false and unconscionable Witnesses; yea, when there is no sufficient Evidence, upon meer Suspi-

cions,

cions, they are obnoxious to the Tortures of the Rack, which often make an Innocent Man confeſs himſelf Guilty, meerly to get out of preſent Pain: Or if he do with invincible Courage, indure the Queſtion (as they call thoſe Torments) he is many times ſo ſpoiled in his Limbs, as he ſcarce ever is his own Man again.

Whereas ſuch has been the Goodneſs of God, and prudent Care of our Anceſtors, that, to our ineſtimable Happineſs, we are born, and live, under a mild and Righteous Conſtitution, where all theſe Miſchiefs may be prevented; where none can be Legally condemned, either by the Power of Superior Enemies, or the Raſhneſs or ill Will of any Judge, nor by the bold Affirmations of profligate Evidence: For by a Fundamental Law in our Government, No Man's Life (unleſs it be in Parliament, which is a Supream Court, and 'tis ſuppoſed will never do any Man wrong) ſhall be touched for any Crime whatſoever, but upon being found Guilty on two ſeveral Tryals (for ſo may that of the Grand and Petty Jury be called) and the Judgment of twice Twelve Men at leaſt, all of his own Condition and Neighbourhood, and upon their Oaths, [Coke 3 Part of *Inſtit.* p. 40.] That is to ſay, Twelve or more to find the Bill of Indictment againſt him, and Twelve others to give Judgment upon the General Iſſue of *Not Guilty*: All which Jurors muſt be honeſt, ſubſtantial, Impartal Men, and being Neighbours of the Party accuſed, or place where the ſuppoſed Fact was committed, cannot be preſumed to be unacquainted either with the Matters charged, the Priſoners courſe of Life, or the Credit of the Evidence; And all theſe muſt firſt be fully ſatisfied in their Conſciences, that he is Guilty, and ſo unanimouſly pronounce him upon their Oaths, or elſe he cannot be Condemned. For the Office and Power of theſe Juries is Judicial: They only are the Judges, from whoſe Sentence the Indicted are to expect Life or Death; upon their Integrity and Underſtanding, the Lives of all that are brought into Judgment, do ultimately depend; from their Verdict there lies no

Appeal;

Appeal: By finding Guilty or not Guilty, they do complicately resolve both Law and Fact.

Judges are made by Prerogative, and many times heretofore they have been preferred by Corrupt Ministers of State, and may be so again in time to come; and such advanced as would serve a present Turn, not always those of the most Integrity and Skill in the Laws: Their places are so Honourable and Profitable and their Tenure so Tickliſh, viz. *durante beneplacito*, meerly during Pleaſure, that they lie under no ſmall Temptations, which perhaps, with ſome, may be nevertheleſs unlikely to prevail; for their having generally been wont before to take Fees, they are concern'd in ſo many Cauſes, that they are the oftner ſubject to be Tempted, and are ſo few that they may be the eaſier Corrupted: They cannot be challenged, and may be apt to think themſelves above any Action, and thence be encouraged to ſtrain a Point now and then. The major part of them agreeing, is enough; they are never Sworn at each particular Trial, nor ever at all but once, and that exceeding Generally. I ſay all theſe things may poſſibly happen, to Biaſs ſome Judges, (for I intend not the leaſt Reflection hereby on any of thoſe Honourable Perſons, who now Deſervedly ſit upon our Seats of Juſtice: But nothing of that kind can reaſonably happen to a Jury. For, 1. They are return'd by a Sworn Officer. 2. Muſt be Men of a clear Reputation, and competent Eſtate. 3. Being Neighbours, they may know ſomething of the Buſineſs on their own Knowlede. Their Office is but a trouble not accompanied with any great Honour nor any profit at all. 5. They are all ſolemnly ſworn to each particular Cauſe. 6. The party may challenge 35 in caſe of Treaſon, and 20 of them in Felony, without ſhewing any cauſe, and as many more as he can aſſign Cauſe againſt. 7. Of the Grand Jury, Twelve at leaſt muſt joyn in the Verdict, and of the Petty Jury, every man of the Twelve muſt conſent upon his Oath, or elſe 'tis all nothing. And laſtly, if they give a corrupt Verdict between Party

and

and Party, they are liable to *Attaint*. [But I do not find any Attaint lyes in Criminal causes, where the King is a party.]

Now, let any Man of Sense consider, whether this method be not more proper for *bolting* out the Truth, for finding out the *Guilty*, and preserving the *Innocent*, than if the whole Decision were left to the Examination, of two or three, whose *Interest*, *Passion*, *Haste*, or *Multiplicity* of Business may easily betray them into Error.

Deservedly therefore is this Tryal by *Juries* rank'd amongst the choicest of our Fundamental Laws, which whosoever shall go out openly to *Suppress*, or craftily to *Undermine*, and render only a Formality, does *Ipso Facto* attack the Government, and brings in an Arbitrary Power, and is and Enemy an Traytor to his Queen and Countrey; for which reason *English* Parliaments have all along been most Zealous for preserving this great Jewel of Liberty, Tryals by Juries, having no less than 58 several times since the *Norman* Conquest, been Established and Confirmed by the Legislative Power, no one Priviledge besides having been ne're so often remembred in Parliament.

SECT II.

What Persons ought to be Jury-Men, and how Qualified.

AS the Office of Juries is of such great Importance, so the Wisdom of our Law has provided that the same shall be Supplyed with Persons of Ability, Honesty, Integrity, and Indifferency; for, (as my Ld. *Coke* saith, 1 Part *Instit.* Sect. 234. Fol. 155.) He that is of a Jury must be *Liber Homo*, that is, not only a *Free-Man*, and not Bond, but also one that hath such *Freedom of Mind*, as he stands indifferent, as he stands Unsworn. 2. He must be *Legalis*, and by the Law every Juro

Juror that is returned for the Tryal of any Iſſue or Cauſe, ought to have Three Properties. 1. He ought to be dwelling moſt near to the place where the Queſtion is moved. 2. He ought to be moſt Sufficient, both for Underſtanding and competency of Eſtate. 3. He ought to be leaſt Suſpicious, that is, to be Indifferent as he ſtands Unſworn; but a Mans being Excommunicated, (as was ſaid before) is no Bar to his being a Juryman, much leſs his being a Diſſenter, or Non-frequenter of Church-Ceremonies, if he be otherwiſe qualified with Eſtate and Underſtanding; for at that rate, if Popery ſhould ever get uppermoſt, NO Proteſtant at all would be capable of being a Juryman, becauſe a Nonconformiſt to Holy Church. Now if no Statute excludes Proteſtants unconvicted of any Crime, or Diſſenters (*qua tales*) to ſerve on Juries, I ſhould think we Ought to wait at leaſt till an Act of Parliament be made to that Purpoſe, before we deny them *Liberam Legem*; and to act otherwiſe, in my ſilly Opinion, ſeems not only unwarrantable, but a daring Uſurpation of Legiſlative Power: In a word, Jurors muſt be Free of and from all manner of Bondage, Obligations, Affections, Relations, and Prejudices; they muſt be the Peers or Equals of the Party they are to Try; they muſt be of full Age, 21 Years Old, or upwards, not *Outlawed*, never *Attainted*, nor *Convicted* of Treaſon, Felony, falſe Verdict, Perjury, or adjudged Infamous; they were antiently all Knights, as we read in *Glanvil* and *Bracton*, and they muſt ſtill be Perſons of Worth and Repute; and as they are Returned by a Sworn Officer, the Sheriff, ſo they of the Petty-Jury muſt be every one Sworn every ſeveral Trial by a particular Oath, the more to remind them of their Duty. Nay, it ſhould ſeem in ancient times, though the Office and Duty was ſtill the ſame as at this Day, yet their Honour and Dignity were much greater; The *Mirror of Juſtices*, makes no Scruple to call 'em *Judges*; and Dr. *Cowel* in his Interpreter tells us, Juries *were antiently Aſſociates and Aſſiſtants to the Judges of the Court in a kind of Equality*, whereas now a days, they

they attend them in great Humility : And cites the Customary of *Normandy*, and *Lambert*, as being of the same Sentiments. But I desire not to bring in Innovations, only that *Englishmen* may preserve their ancient Rights and Priviledges, inform themselves of their Duty and Office by Law, that so they may uprightly Discharge the same to GOD and the Queen, and their Fellow-Subjects.

SECT. III.

Of Grand Juries, their Duty, and the great Importance of their Office.

JUries are of two sorts : 1.-The *Grand Jury*, so call'ed, both because it consists of a greater number than twelve, as commonly 21, 19. 17, or the like, [but note, they can make no Verdict or Presentment, unless twelve, at least of them agree, and then what they do is Valid, though the rest do not consent,] as also because generally they are of the greater Quality, and likewise in respect of their Power, because the extent of their Office is more great and general, as extending to all Offences throughout the whole County for which they serve. 2. The *Petty Jury* (in Cases Criminal called commonly the Jury of Life and Death) which always consists of Twelve Men, neither more nor less, who must every Man agree, or else it is no Verdict.

The Oath of a Grand Jury-man, as I find it inserted in the Collection, Intituled, *The Book of Oaths*, p. 216. is as follows.

YE shall truly Inquire, and due Presentment make, of all such things as you are charged withal on the King's behalf : The King's Council, your own and your Fellows, you shall well and truly keep, and in all other things the Truth present. So Help you God, and by the Contents of this Book.

But

But according to Modern Practice, and as we find it Publiſhed in the Account of the Proceedings againſt the Right Honourable the Earl of *Shaftsbury*, ſaid to be Publiſhed by His Majeſty's ſpecial Command, is expreſſed ſomewhat more largely.

The Oath Adminiſtred to the Grand Jury, as follows.

YOU ſhall diligently Inquire, and true Preſentment make, of all ſuch Matters, Articles, and things as ſhall be given you in Charge, as of all other matters and things as ſhall come to your knowledge touching this preſent Service; the King's Counſel, your Fellows and your own, you ſhall keep ſecret: You ſhall preſent no Perſon for Hatred or Malice, neither ſhall you leave any one unpreſented for Fear, Favour or Affection, for Lucre or Gain, or any hopes thereof, but in all things you ſhall preſent the Truth, the whole Truth, and nothing but the Truth, to the beſt of your knowledge. So help you God.

The Office of a Grand Jury, or Grand Inqueſt, (for by both thoſe Names 'tis promiſcuouſly called) is principally concern'd in two things, *Preſentments* and *Indictments*, the difference of which is thus: The firſt is, when the Jury themſelves, of their own Knowledge or Inquiry, do take notice of ſome Crime, Offence or Nuſance, to the Injury of the Publick, which they think fit ſhould be puniſhed or removed; and in order thereunto do give the Court notice thereof in Writing briefly and without Form, only the Nature of the thing, and the Perſon's Name, and the Place. And this is call'd a *Preſentment*, being the matter whereon to form an Indictment, from which the Preſentment differs in theſe two reſpects. 1. In that it is always Originally the Act of the Grand Jury. And, 2 That it is not yet drawn up in Form; whereas Indictments are commonly drawn up, either by the Order of the Court, or at the Inſtance of ſome Proſecutor, and are brought before, and delivered unto the Grand Jury,

and

and the Witneſſes Sworn attend them, who examine the ſaid Witneſſes, and, as they think fit, Return the Indictments Indors'd either *Billa Vera*, [that is, *A true Bill*,] or *Ignoramus*, [*We are Ignorant*] that is, we do not find the Matter, or there does not appear to us ſuch ſufficient Grounds for the Accuſation, that the Perſon's Life and Reputation ſhould be brought into queſtion.

From whence it appears, that the end of their Office is likewiſe two-fold. 1. To inquire after, and give notice of all Crimes, Offences, Nuſances, &c. in the Country for which they ſerve, which by reaſon of their Inhabitancy and Eſtates therein, they are preſumed to have beſt opportunity to diſcover, and to find Bills, againſt Malefactors, where there are good Grounds for the ſame, that ſo they may be brought to Trial if they are are forth-coming, or may be proceeded againſt to the Outlawry, if they are fled for their ſaid Offences. 2. To preſerve the Innocent from the Diſgrace and Hazards which ill Men may deſign to bring them to, out of Malice, or through Subornation, or other ſiniſter ends; for ſo tender is the Law, of the Reputation and Life of a Man, that it will not ſuffer the one to be ſullied, by the Party's holding up his Hand at the Bar, and the other indangered by a Trial, until firſt the Matter and Evidence againſt him have been ſcanned, examined, and found by a Grand Jury, upon their Oaths, againſt him: Therefore you ſee by their Oaths, They are Sworn not only to Inquire, but diligently to Inquire, not to be Negligent or Slothful, nor to take things upon truſt, or hurry them over careleſly, but to weigh the Circumſtances, and ſift the Witneſſes, and ſearch out the Truth of ſuch Informations as come before them, and to reject the Indictment, if it be not ſufficiently proved; and if they have reaſonable Suſpition of Malice, Subornation, or wicked Deſigns againſt any Man's Life or Eſtate, in ſuch as offer or come to Swear to the Bill of Indictment, they are bound by Law, as well as in Conſcience, to uſe all diligence to diſcover

discover the Villany; and if it appear to them (whereof they are the Legal Judges) to be a Conspiracy, or malicious Conspiracy, against the Accused, they are bound, not only to reject such Bill of Indictment, but forthwith to Indict all the Conspirators, with their Associates and Abettors: And that this is a main part of the Grand Juries Office, appears not only from Legal Reason, but by an express Statute, *viz.* 25 Edw. 3. 4. and 42 Edw. 3. 3. which says, *That for preventing Mischiefs done by* FALSE ACCUSERS; *none shall be put to answer, unless it be by Indictment, or Presentment of good and lawful People of the same Neighbourhood where such Deeds be done*; that is to say, by a Grand Jury.

The Grounds upon which Grand Juries are to proceed in giving their Verdict, are either,

1. From their own Knowledge, and so they may find an Indictment against a Person, though there be never a Witness at all to it, and a Petty Jury may in like manner find a Person Guilty of a Felony or Murder whereof he stands indicted, though no Witnesses appear against him to prove it; and the reason thereof is, because the Juries being always of the *Vicinage*, the Law supposes they may know the matter of their own knowledge, and therefore in all such Cases, when a Jury is charged with a Prisoner, and after the Indictment read, Witnesses fail to appear, the Court always speaks thus to a Jury: *Gentlemen, here is* A. B. *stands Indicted of a Crime, but here's no Witnesses come against him, so that unless, on your own knowledge, you know him Guilty, you must Acquit him:* And certainly, if the Juries knowledge of a Man's Guilt is enough to Condemn him, I see not why their personal knowledge of a Prisoner's Innocency, or of the Witnesses Swearing falsely, should not be sufficient to Acquit him.

2. The other ground upon which the Grand Juries are to proceed, is *Testimony of Witnesses*, and this is called EVIDENCE, because it ought to be such as may make the matter clear, manifest, plain, and evident

dent to the Jury; and of this Evidence, the Jury are the proper and only Judges, therefore they ought (according to their Oath) diligently Inquire into the Quality, Repute, and Circumstances of the Witnesses, the likelihood of what they depose, and whether they do not Swear out of Malice, Subornation, Self-interest, Combination, or some ill Design; which to discover, they will do well to examine them a-part, to note their Variations and Contradictions, to ask them sudden Questions, and what Questions are pertinent, not the Judges, but the Jury only, can determine; for they may know how to make use of them towards Discovery of the Truth, though the Judge do not, and 'tis they are upon their Oath, not he; 'tis they must satisfie their own Consciences, the Judge has nothing to do to Intermeddle, he is bound by their Verdict: Let Witnesses be never so rampantly positive, yet if the Jurors have good and reasonable Grounds not to believe them, they will, they must remain as Ignorant to the Parties Crime as before; We find this expresly asserted for Law in our Books, as *Stiles*'s Reports, *Lib.* 11. though there be Witnesses who prove the Bill, yet the Grand Inquest is not bound to find it, if they see cause to the contrary, so *Coke* Lib. 6. The Judges use to determine who shall be Sworn, and what shall be produced as Evidence to the Jury; but the Jury are to consider what Credit or Authority the same is worthy of. If a Grand Jury are not Judges of Evidence, they signifie nothing. If (as some would persuade us) because People Swear desperately, though they do not believe them, they shall be bound to find the Bill, then they signifie nothing, and are no Security to preserve Innocency. A lewd Woman once resolved to Indict the then Archbishop of *Canterbury* for a Rape, she Swore it, no doubt, very heartily, according to this new Doctrine of going according to Evidence, the Jury must presently have found the Bill, the Archbishop must have been Committed to Prison, Suspended from Ecclesiastical Jurisdiction, his Goods and Chattels throughout

England

England Inventoried by the Sheriffs; would it, think you, in that Caſe, have been a good Excuſe for the Grand Jury, to have ſaid, that though they believed in their Conſcience the Baggage ſwore falſe, yet ſhe ſwearing it poſitively, they, as ſo many Pariſh-Clerks, were but to ſay *Amen* to her Oath of the Fact, and to find *Billa Vera* againſt that eminent Prelate? And if the Jury be Judges of the Credibility of Evidence in this Caſe, and may go contrary to it, Why, I pray, may they not have the ſame Liberty, where they find good Cauſe in others?

If an Indictment be laid againſt a Man for Criminal Words, ſaid to be uttered in a Colloquium, or Diſcourſe, though the Witneſſes roundly Swear all the expreſs Words in the Indictment, yet unleſs they will relate and ſet forth the Subſtance of the whole Talk, 'tis impoſſible the Jury ſhould judge of the matter; for the foregoing and ſubſequent Words, may render Expreſſions that are Innocent and Loyal, which taken to halfs, may be rank Treaſon, as if one ſhould ſay, *To affirm the King has no more Right to the Crown of* England *than I have, (which is the Opinion of the Jeſuits, of His Majeſty, if once Excommunicated by the Pope) is deteſtable Treaſon.* And two Men at ſome Diſtance, not well Hearing, or Remembring, or Maliciouſly Deſigning againſt his Life, ſhould Swear, that he ſaid, ----*The King had no more Right to the Crown than he had.* Now, that the Man did utter theſe very Words is true; but if you ask the Evidence the reſt of the Colloquium, they ſhall tell you there was much more Diſcourſe, but they cannot remember it; what Satisfaction is this to a Jury? Or would it not be hard, for a Man to be put to hold up his Hand at the Bar, under the frightful Charge of Treaſon in this caſe? Or, if a Miniſter, in his Sermon, ſhould recite that of the Pſalms, *The Fool hath ſaid in his Heart there is no God*: Jeſuited Evidence may now come and charge him with Blaſphemy, and Swear that he ſaid, *There was no God*: And ask them what Expreſſions beſides he uſed, may excuſe themſelves, and ſay, 'Tis a great while ago,

ago, we cannot remember a whole Sermon, but this we alſo poſitively Swear, *He ſaid there was no God.*

The Inquiry of a Grand Jury ſhould be ſuitable to their Title, a *Grand Inquiry*; elſe inſtead of ſerving their Country, and preſenting real Crimes, they may Oppreſs the Innocent, as in the Caſe of *Samuel Wright* and *John Good*, at a Seſſions in the *Old-Bailey*, about *December*, 1681. *Good* Indicts *Wright* for Treaſonable Words, and ſwore the Words poſitively; but after a Grand Inquiry, the Grand Jury found that *Wright* only ſpoke the Words as of others, thus, *They ſay ſo and ſo*---- and concluded with this---*They are Rogues for ſaying it*; and alſo *Good* at laſt confeſſed that *Wright* was his Maſter, and corrected him for Miſdemeanors; and then to be Reveng'd, he comes and ſwears againſt him, and which he confeſſed he was inſtigated to by one *Powel*; ſo the Grand Jury finding it to be but Malice, returned the Bill *Ignoramus*; whereas, if they had not examined him ſtrictly, they had never diſcovered the Intrigue, and the Maſter had c uſeleſly been brought to great Charge, Ignominy and Hazard.

The Judicious *Dalton*, p. 539. ſays well, *No leſs Care or Concern at all, lies on the Grand Jury, than does on the Petty Jury:* People may tell you, *That you ought to find a Bill upon any probable Evidence, for 'tis but matter of Courſe, a Ceremony, a Buſineſs of Form, only an Accuſation, the Party is to come before another Jury, and there may make his Defence.* But if this were all, to what purpoſe have we Grand Juries at all? Why are the wiſeſt, beſt Men in the Country (for ſuch they are, or ſhould be) troubled? Why are they ſo ſtrictly Sworn? Do not flatter your ſelves, you of the Grand Jury are as much upon your Oaths, as the Petty Jury; and the Life of the Man, againſt whom the Bill is brought, is in your Hands. The Lord *Coke* 3 *Inſtit.* 33. plainly calls the Grand Jury-men all wilfully Forſworn, and Perjured, if they wrongfully find an Indictment; and if in ſuch a caſe, the other Jury, thro' Ignorance, *&c.* ſhould find the Perſon guilty too, you are guilty of his Blood as well as they: But ſuppoſe he get off there,

there, do you think it nothing to Accuſe a Man upon your Oaths, of horrid Crimes, your very doing of which, puts him, though never ſo Innocent, to Diſgrace, Trouble, Damage, danger of Life, and makes him liable to Outlawry, Impriſonment, and every thing but Death it ſelf, and that too, for ought you know, may wrongfully be occaſioned by it, your raſh Verdict gaining Credit, and giving Authority to another Jury to find him Guilty; For if the Petty-Jury find a Man guilty never ſo unjuſtly, the Law ſuffers no Attaint, or other Puniſhment, to lye againſt them, for this very reaſon, becauſe another Jury, *viz.* the Grand Inqueſt, as well as they, have found him guilty. If a Grand Jury find a Bill wrongfully againſt a Perſon, and it prove never ſo much to his Damage, he has no Remedy; for being upon their Oaths, the Law will not ſuppoſe any Malice. One of the Grand Jury cannot afterwards be of the Petty Jury, and why? Becauſe, ſays the Law, he has once already found the Party Guilty, and if he ſhould not again, he muſt Perjure himſelf. From all which it appears, what a weight and ſtreſs the Law puts upon the Verdict of a Grand Jury; and 'tis remarkable too, that the Law directs them only to ſay, either *Billa Vera*, It is true; or, *Ignoramus*, We know not; and never, that it is not true; Which ſhews, that if they be doubtful, or not fully ſatisfied, the Indictment muſt be indorſed *Billa Vera*, we know 'tis true; but *Ignoramus*, we doubt it, we do not know it, we are not certain it is true. If they find a Bill where they ought not, they wound their own Conſciences, and do an irrepairable Damage to the Party; but where they do not find the Bill, there is no harm done to any Body, for another Indictment may be brought when there is better Evidence.

SECT.

SECT. IV.

That Juries are Judges of Law, in some respects, as well as Fact.

AMongst other Devices, to undermine the Rights and Power of Juries, and render them Insignificant, there has an Opinion been advanced, That they are only Judges of Fact, and are not at all to consider the Law; so that if a Person be Indicted for a Fact, which really is no Crime in it self by Law, but is worked up by words of Form, as *Treasonably*, *Seditiously*, &c. if the Fact be but proved to be done, though the said wicked Circumstances do not appear, they shall be supplied by the Law, which you are not to take notice of, but find the Bill, or bring in the Person Guilty, and leave the Consideration of the Case in Law to the Judges, whose business it is.——— Thus some People argue, but it is an apparent Trap, at once to perjure Ignorant Juries, and render them so far from being of good use, as to be only Tools of Oppression, to Ruin and Murder their innocent Neighbours with the greater Formality: For though it be true, that Matter of Fact is the most common and proper Object of a Juries Determination, and matter of Law that of the Judges, yet, as Law arises out of, and is complicated with Fact, it cannot but fall under the Juries Consideration. *Littleton*, Sect. 368. teaches us, That the Jury may, at their Election, either take upon them the Knowledge of the Law, and determine both the Fact and Law themselves, or else find the Matter specially, and leave it to the Judges: 'Tis by applying Matter of Fact and Law together, and from their due Consideration of, and right Judgment upon both, that a Jury brings forth their Verdict. Do we not see in most general Issues, as upon not Guilty pleaded in Trespass, breach of the Peace, or Felony, though it be matter in Law, whether

ther the Party be a Treſpaſſer, a Breaker of the Peace, or a Felon, yet the Jury do not find the Fact of the Caſe by it ſelf, leaving the Law to the Court, but find the Party Guilty or not Guilty generally; ſo that though they anſwer not to the Queſtion ſingly, what is Law, yet they determine the Law in all matters where Iſſue is joyned. Is it not every days Practice, when Perſons are Indicted for Murder, the Jury does not only find them Guilty or not Guilty, but many times upon hearing and weighing of Circumſtances, brings them in either Guilty of the Murder, or elſe only of Man-ſlaughter, *per* miſadventure, or *ſe defendendo*, as they ſee cauſe? Beſides, as Juries have ever been veſted with ſuch Power by Law, ſo to exclude from or Diſſeize them of the ſame, were utterly to Defeat the End of their Inſtitution. For then if a Perſon ſhould be Indicted for doing any common innocent Act, if it be but cloathed and diſguiſed in the Indictment with the name of Treaſon, or ſome other High Crime, and proved by Witneſſes to have been done by him, the Jury, though ſatisfied in Conſcience, that the Fact is not any ſuch Offence, as 'tis called, yet becauſe (according to this fond Opinion) they have no Power to judge of Law, and the Fact charged is fully proved, they ſhould at this Rate be bound to find him Guilty: And being ſo found, the Judge may pronounce Sentence againſt him, for he finds him a Convicted Traytor, &c. by his Peers: And ſo Juries ſhould be made meer Properties to do the Drudgery, and bear the blame of unreaſonable Proſecutions. But all this is abſur'd and abhorr'd by the Wiſdom, Juſtice and Mercy of our Laws.

In every Indictment, Information, &c. there are certain words of Courſe, called matter of Form, as *Maliciouſly*, *Seditiouſly*, *with ſuch and ſuch Intention*, &c. And theſe ſometimes are raiſed by a Juſt and reaſonable Implication in Law, and ſometimes are thruſt in meerly to raiſe a Pretence or Colour of Crime, where there is really none. So that every Jury-man ought well to underſtand this Diſtinction, where the Act or naked

naked matter of Fact charged, is in it self a Crime of Offence againſt Law; as killing of a Man, Levying of War againſt the King, *&c.* there the Law does in pleading require, and will ſupply thoſe words; and if the Jury do find and are ſatisfied, That the ſubſtance of the Charge is ſuch a Crime, and the Perſon Guilty thereof, they are bound to find it, though no direct Proof be made of thoſe Circumſtantials: But where the Act or matter of Fact, is in it ſelf Innocent or Indifferent, there the Purport of theſe words (as that it was done *Maliciouſly*, or with *ſuch* or *ſuch* a *deſign*) is neceſſary to be proved: For elſe there is no Crime, and conſequently no fit matter to be put to Trial. In which caſe, the Grand Jury is bound in Conſcience and Law to return an *Ignoramus*, and a Petty Jury *Not Guilty*.

SECT. V.

That Juries are not Finable, or any way to be puniſh'd, under Pretence of going contrary to Evidence, or againſt the Judges Directions.

MUch of what we have ſaid of Grand Juries, is alſo applicable to Petty Juries, ſo that we need not repeat it, only muſt anſwer one Objection. Some Jury-men may be apt to ſay,—If we do not find according to Evidence, though we have reaſon to ſuſpect the truth of what they Swear, or if we do not find as the Judge directs, we may come into trouble, the Judge may fine us, *&c.* ---- I anſwer, This is a vain fear: No Judge dare offer any ſuch thing; You are the proper judges of the Matters before you, and your Soals are at ſtake, you ought to Act freely, and are not bound, though the Court demand it, to give the Reaſons why you bring it in thus, or thus, for you of the Grand-jury are Sworn to the contrary, viz. *To keep ſecret your Fellows Counſel and your own.* And

you of the Petty Jury are no way obliged to declare your Motives, it may not be convenient. 'Twas a notable Case before the Chief Justice *Anderson* in Queen *Elizabeth*'s Days: A Man was Arraigned for Murder, the Evidence was so strong, that Eleven of the Jury were presently for finding him Guilty, the Twelfth Man refused, and kept them so long, that they were ready to starve, and at last made them comply with him, and bring in the Prisoner not Guilty. The Judge, who had several times admonished this Juryman to joyn with his Fellows, being surprized, sent for him, and discoursed him privately; to whom, upon promise of Indemnity, he at last own'd that he himself was the Man that did the Murder, and the Prisoner was Innocent, and that he was resolved not to add Perjury, and a second Murder to the first.---But to satisfy you that a Jury is no way punishable for going according to their Conscience, though against seeming Evidence, and the Reasons why they are, and ought not to be questioned for the same, I shall here recite an adjudged Case, that of *Bushel*, in the two and twentieth Year of King *Charles* II. Reported by the Learned Sir *John Vaughan*, whose Book was Licensed by the then Lord Chancellor, the Lord Chief Justice *North*, and all the Judges then in *England*: The said Case begins Fol. 135. and continues 150. the whole well worth Reading, but I shall only select certain Passages----

The Case was this:

BUshel, *and others of a Jury, having, at a Sessions, not found* Pen *and* Mead *(two Quakers) Guilty of a Trespass, Contempt, Unlawful Assembly and Tumult, whereof they had been Indicted, were Fined Forty Pound a Man, and Committed till they should pay it.* Bushel *brings his* Habeas Corpus, *and upon the Return it appeared he was Committed,--- For that contrary to Law, and against full and clear Evidence openly given in Court, and against the Directions of the Court in matter of Law, they had acquitted the said* W. P. *and* W. M. *to the great Obstruction of Justice,* &c. *Which, upon solemn Argument, was by the Judges resolved to be an Insufficient Cause of Fining and Committing them, and they were discharged*

discharged and afterwards brought Actions for their Damage. The Reasons of which Judgment are Reported by Judge *Vaughan*, and amongst them he useth these that follow, which I shall give you in his own words:

Fol. 140. *One fault in the Return is, That the Jurors are not said to have Acquitted the Persons Indicted, against full and manifest Evidence,* Corruptly and Knowing the said Evidence to be full and manifest against the Persons Indicted; *For how manifest soever the Evidence was, if it were not manifest to them, and that they believed it such, it was not a* Finable Fault, nor deserving Punishment; *Upon which Difference the Law of Punishing Jurors, for false Verdicts, principally depends.*

And Fol. 141. *I would know, whether any thing be more common, than for two Men, Students, Barristers, or Judges, to deduce contrary and opposite Conclusions, out of the same Case in Law? And is there any Difference, that two Men should infer distinct Conclusions from the same Testimony? Is any thing more known, than that the same Author, and place in that Author, is forceably urged to maintain contrary Conclusions, and the Decision hard which is in the Right? Is any thing more frequent in the Controversies of Religion, than to press the same Texts for opposite Tenets? How then comes it to pass, that two Persons may not apprehend, with Reason and Honesty, what a Witness, or many say, to prove in the Understanding of one plainly one thing, but in the Apprehension of the other, clearly the contrary thing? Must therefore one of these Merit* Fine and Imprisonment, *because he doth that which he cannot otherwise do, preserving his Oath and Integrity? And this is often the Case of the Judge and the Jury.*

And Fol. 142. *I conclude therefore, That this Return, charging the Prisoners to have Acquitted* P. *and* M. *against full and manifest Evidence first, and next, without saying that they did* know and believe that Evidence to be full and manifest *against the Indicted Persons, is no* Cause of Fine and Imprisonment.

In the Margin of that Fol. 142. it is thus noted: *Of this Mind were Ten Judges of Eleven; the Chief Baron* Turner *gave no Opinion, because not at the Argument.*

And in the same Fol. 142. he saith, *The Verdict of a*

Jury, and Evidence of a Witness, are very Different things, in the Truth and Falshood of them: A witness Swears but to what he hath heard or seen generally, or more largely, to what hath fallen under his Senses: But a Jury-man Swears to what he can Inferr and conclude from the Testimony of such Witnesses, by the Act and force of his Understanding, to be the Fact inquired after; which differs nothing in Reason, though much in the Punishment, from what a Judge, *out of various Cases considered by them, infers to be the Law in the question before him.*

If the meaning of these words, finding *against* the Direction of the Court, *in matter of Law, be, That if the* Judge, *having heard the Evidence given in Court (for he knows no other) shall tell the Jury, upon this Evidence, the Law is for the Plantiff, or for the Defendant, and you are under the Pain of Fine and Imprisonment to find accordingly, and the Jury ought of duty so to do; then every Man sees, that the Jury is but a troublesome delay, great Charge, and no use in determining Right and Wrong; and therefore the Tryals by them may be better abolished than continued: Which were a strange new-found Conclusion, after a Tryal so Celebrated for many hundred Years.*

It is true, if the Jury *were to have no other Evidence for the Fact, but what is Deposed in Court, the* Judge *might know their Evidence, and the Fact from it, equally as they, and so direct what the Law were in the Case; though even then, the* Judge *and* Jury *might honestly differ in the Result from the Evidence, as well as two* Judges *may, which often happens; but the Evidence which the* Jury *have of the Fact, is much otherwise than that: For,*

1. *Being returned of the Vicinage where the Cause of Action ariseth, the Law supposeth them thence to have sufficient Knowledge to Try the matter in Issue (and so they must) though no Evidence were given on either side in Court; but to this Evidence the* Judge *is a stranger.*

2. *They may have Evidence from their own Personal Knowledge, by which they may be assured, and sometimes are, that which is deposed in Court is absolutely false; but to this the* Judge *is a stranger, and he knows no more of the Fact than he hath learned in Court, and perhaps by false Depositions, and consequently knows nothing.*

3. *The*

3. *The Jury may know the Witnesses to be Stigmatized, and Infamous, which may be unknown to the Parties, and consequently to the whole Court.*

Fol. 148. *To what end is the jury to be Returned out of the Vicinage, where the cause of Action ariseth? To what end must Hundredors be of the jury, whom the Law supposeth to have nearer knowledge of the Fact, than those of the Vicinage in general? To what end are they challenged so scrupulously to the Array and Poll: To what end must they have such a certain Free-hold, and be* Probi & Legales homines, *and not of Affinity with the Party concern'd? To what end must they have, in many Cases, the View, for Exacter Information chiefly? To what end must they undergo the Punishment of the Villianous judgment, if (after all this) they Implicitly must give a Verdict by the Dictates and Authority of another Man, under Pains of Fines and Imprisonment, when Sworn to do it according to the best of their own Knowledge?*

A Man cannot see by anothers Eye, nor hear by anothers Ear; no more can a Man conclude or Infer the thing to be resolved by anothers Understanding or Reasoning; and tho' the Verdict be right the jury give, yet they being not assured that it is so, from their own Understanding, are Forsworn, at least in foro Conscientiæ.

Fol. 149 *And it is Absurd to Fine a jury for finding against their Evidence, when the judge knows but part of it; for the better and greater part of the Evidence may be wholly unknown to him, and this may happen in most Cases, and often doth.* Thus far Judge *Vaughan.*

CHAP. I.

Of Justices of the Peace, their Oath, Office and Power, in several Respects.

THE word *Justice* bears in it self so plain and easy a Definition, that it is altogether Needless to enter into any long Harangue about it: Let it suffice then, for their Antiquity, according to *Dalt*

6. & *Lamb*, 10. that they were created, 1 *Edw.* 3. cap. 75. but first receiv'd the Name from the 36 *Edw.* 3. c. 12. He has great Power and Authority in Determining many Cases, according to the Tenor of the Oath administred to him, which is this, *Lamb.* 53.

YE Shall Swear, *That as Justice of the Peace in the County of* M. *in all Articles in Her Majesty's Commission to you directed, you shall do equal Right, to the Poor and to the Rich, after your Cunning, Wit and Power, and after the Laws and Customs of this Realm, and Statutes thereof made: And you shall not be of Counsel of any Quarrel hanging before you: And that you hold your Sessions after the Form of the Statutes thereof made; and the Issues, Fines, and Amerciaments that shall happen to be made; And all Forfeitures, which shall fall before you, you shall cause to be entred without any Concealment (or Imbezeling) and truly send them to the Queen's Exchequer; you shall not Lett for Gift, or other cause, but well and truly you shall do your Office of Justice of the Peace in that behalf: And that you take nothing for your Office of Justice of the Peace to be done, but of the Queen, and Fees accustomed, and Costs limited by the Statute: And you shall not direct, nor cause to be directed, any Warrant (by you to be made) to the Parties, but you shall direct them to the Bailiffs of the said* County, *or other Her Majesty's Officers (or Ministers) or other indifferent Persons, to do Execution thereof.* So help you God, and by the Contents of this Book.

With this Oath is to be administred the Oathes of 1 *Gul.* & *Mar.* cap. 8. before a Justice can exercise the Office of a Justice of the Peace; which done, he has full Power to administer the same Oathes to others; and hath power to examine upon Oath, where the Statute referreth the Trial to the Justices Discretion, *Dalt.* 20. His Warrant is not to be disputed by the Constable, for any thing wherein he hath Jurisdiction of the Cause.

What

What Justices *of the Peace may do by Virtue of their Commission, from One to Eight.*

Of the Authority of One Justice.

One Justice of the Peace, on Complaint, may commit till the Assizes, or Sessions, all Popish Recusants Convicted, above 18 Years of Age, under the Degree of Barons. He may prevent a Riot, stay it, and commit them that are concerned in acting of it. He may upon view, or Proof by two Witnesses, Warrant the Levying 20 *l.* Forfeiture for an Unlicensed Ale-house, to be given to the Poor.

He may cause High-ways to Markets to be inlarged, and cleansed of Trees and Bushes, 12 *Edw.* 1. cap. 5. He may punish prophane Swearing, by Fine, made out by Testimony or Confession. He may punish Offences in Watermen, and Transporters of Corn.

One Justice of the Peace may bind a Cheater to his good Behaviour, *Dalt.* 63. *Jacobi* 1. He may convict of Drunkenness, by 12 *Jacobi* 1. cap. 7. He may seize the Goods of Gipsies, within a Month after their Arrival, 22 *Hen.* 8. cap. 10. He may Record a Riot in his View, and commit the Rioters, or bind them to their good Behaviour; but single, or alone, proceed no further, *Dalt.* 195.

One Justice of the Peace may examine and bind over unlawful Hunters in the Night-time, 1 *Hen.* 7. cap. 7. The like of taking or killing Conies in the Night-time, 22, 23 *Caroli* 1. He may take an Indictment of Barretry, without a special Commission, 2 *Cro.* 32. A Justice of Peace in *London* ought to send Felons to the common Goal, not to the Counter, 1 *Co.* 120. He may Convict of the Breach of the Lord's-Day, against 29 *Car.* 2. And may allow of cause for travelling in a Boat on the Lord's-Day, according to the said Statute. A Justice of the Peace, inhabiting in the Hundred where one was Robbed, may, if he be at *York* or *London*, take the Party's Oath, being but an Examination, and no Act of Jurisdiction.

Of the Authority of Two Justices.

Two Justices of the Peace may Bind One to the Quarter Sessions, to answer his Offence against a Penal-Law, *Lamb.* 187. *v. Dalt.* They may allow and Discharge an Ale-house-keeper at Discretion. They may dispose of at Discretion, all Forfeitures to grow and become due on the Statute of Rogues. They may Fine the Head Officers in Burroughs and Market-Towns, who are remiss in viewing the Weights and Measures, and break and burn those that are Defective; and Fine Sellers with unlawful Weights, at Discretion.

Two Justices may Assess all the Parishes within the Hundred, proportionably, for the Parries charged upon a Robbery. They may allow Surveyors and their Servants, to make Materials in another Parish, for the mending the High-ways where they are Defective.

Two Justices may allow Scavengers under their Hands, Confirm a Tax of *Constables, Church-Wardens* and *Surveyors*, &c. They may (one being of the *Quorum*) convene before them the Bailiff and High-constables and take their Accounts of Forfeitures and Defaults, Estreated concerning High-ways.

They may take Order about a Bastard-Child laid in the Parish, 18 *Eliz.* 7. *Jacob.* &c. They may License poor People Diseased, to Travel to the Bath for Remedy, *&c.* 39 *Eliz.* 4.

Two Justices, (one being of the *Quorum*) may Bail a Person Arrested for Man-slaughter, Felony or Suspicion. They may also take an Indictment and Inquisition *Lamb.* 48. They may likewise Reform all False Measures, or Neglect of Clarks of the Market. *Dalt* 251.

Two Justices may Search for Popish Books and Relicks, 3 *Jac.* 1. c. 5. And Punish Defaults in the Overseers of the Poor. May Warrant the *Church-Wardens* and *Overseers* to Levy Arrears of the Rates for the Poor. Likewise Punish Offenders in disturbing the Execution of the Statute against Rogues.

Of the Authority of Three Justices.

Three Justices (one being of the *Quorum*) may License under their Seals, Badgers, and Drovers, 5 *Eliz.* 12. May License Glass-men, to Travel without Begging in the County, 39 *Eliz.* cap. 4.

Three Justices may take the Oathes of Two Witnesses of Depraving the Sacrament, 1 *Edw.* 6. 1. May License the Buying of Corn, to transport from one place to another, 1 *Eliz.* 12.

Of the Authority of Four Justices.

Four Justices may Remand by Warrant under Seal, Malefactors flying into *England*, 7 *Jac.* 1. cap. 1. May consent with the Sheriff, or Goaler of a Corporation, for the removing of Sick Persons, or others, 19 *Car.* 2. cap. 4. May seize a Recusant's Arms, *Jac.* 1. cap. 5. They may Tax the Inhabitants, and make Collectors and Overseers for the Repairing a Bridge, where it is not known who ought to repair it, 22 *Hen.* 8. cap. 5. They may discharge under Seal, an Apprentice Abused by his Master. With several other Things, relating to the Conservation of the Peace and Benefit of the Subject, by their Authority, which is great, by reason of their Conjunction.

Of the Authority of Six Justices, &c.

Six Justices of the Peace may appoint a Common-Goal for the Sheriff to have the Custody of it, 13 *Hen.* 8. They may (one being of the *Quorum*) execute the Laws of the Commissioners of the Sewers, *Dalt.* 219.

In what Cases *Justices of the Peace are subject to Fines, and Imprisonments.*

When a Justice fails to do Justice, he may be put out of Commission and Punished, 4 *Hen.* 7. cap. 12. *Crompt.* 120. *H. Num.* 6. *Lamb.* 370.

If

If he does not Execute the Statutes against Riots, he is to pay 100 *l.* Fine. 13 *Hen.* 4.

If he Embezzels, and Razes Records, he is liable to Fine, Imprisonment, and loss of Office, *Lamb* 631.

Where the Matter concerns the Queen, he may be Imprisoned for taking of Bond in his own Name, and not *in Domino Regi*, 33 *Hen.* 8. c. 9.

In the case of Bailing one not Bailable, and refusing to Bail one Bailable, and Detaining him, he is Fineable, beside paying double to the Prisoner, 3. *Edw.* 1. c. 15. 23. *Hen.* 6. c. 10.

CHAP. II.

In what Case Recognizances are to be taken, and how Warrants are to be made out; with the Fees of a Justice.

SUreties in Recognizance shou'd be Subsidy Men, and besides the party himself, there must be Two others, *Lamb.* 101. *Dalt.* 276.

It is in the Discretion of a Justice of the Peace, if he takes a *Recognizance ex Officio*, to appoint the Number of the Sureties, their Sufficiency in Goods and Lands, and the Sum of Money, and how long the Party shall be Bound, *Lamb* 100. *Dalt.* 276.

A Justice of Peace may make his Warrant to come before himself, yet in a Warrant for the Peace, the usual manner is otherways. *Dalt.* 461.

A Warrant made in the King's Name, ought to be made to all Ministers, as well within Liberties, as without.

If a Justice of the Peace make a Warrant beyond his Authority, it is not Disputable by a Constable or other Officer, but must be Obeyed, unless it be to do a thing out of the Justices Jurisdiction, in a Cause where there is no Judge; for if in this latter Case the Officer execute the Warrant, he is Punishable, *Dalt* 855. *Lamb.* 91.

A Warrant directed to Two joyntly to Arreſt a Perſon, he may be Arreſted by either of them.

A Written Warrant muſt be under the Juſtice's Hand and Seal, his Hand at leaſt; but 'tis better to be Seal'd as the uſual way is.

A Mittimus muſt contain the Name of the Party or Parties, his or their Offences, and the time of Impriſonment, that it may appear whether the Priſoner be Bailable or not. *Dalt.* 439.

And when the Mittimus is General; the other Juſtices that Bail muſt take Notice at Peril.

Law Caſes relating to the Office of a Juſtice of the Peace.

IF the Warrant be to bring before him, or any other Juſtice, it is at the Election of the Officer to which Juſtice he will go.

A Warrant may be made to bring before a particular Juſtice.

Juſtices not to Impriſon, but in the Common Goal.

One Juſtice of the Peace cannot commit another Juſtice for Breach of the Peace.

Seſſions of the Peace may.

If a Juſtice purſue not the Statute, there his Act is void: But if he purſue it, then neither *B. R.* nor Juſtices of the Peace can diſcharge him.

Ale-houſes.

One was Indicted for ſelling Ale in Black-Pots; being not Sealed Meaſure.

All Indictments againſt Perſons for ſelling of Ale without Licenſe, muſt conclude with the Clauſe, *contra forma Statuti.*

Where an Inn doth uſe the Trade of an Ale-houſe, 'tis within the Statutes of Ale-houſes.

Husband muſt be joyned with the Wife in an Indictment, for the Wife's ſelling Ale without Licenſe, becauſe he muſt pay the Fine.

An Indictment was preferred againſt a Brewer for ſelling Ale to one that Retailed the ſame, not being Licenſed.

Any one may keep an Inn for Lodging for Travellers, without any Allowance or Licenſe.

A Form of a Warrant for renewing Licenſes of Alehouſe-keepers.

Middleſex. *To the Conſtable of,* &c.

THeſe are (in Her Majeſty's Name) to command you to warn all the Licenſed Ale-houſe-Keepers, Victuallers, and ſuch others within the ſaid Hundred, as do uſe commonly ſelling of Ale, Beer, Perry or Syder, perſonally to appear before us at the Houſe of F. D. *&c. upon Monday the ſixth day of* May, *at nine of the Clock in the Forenoon of the ſame Day; and to bring with them then and thither, as well their former Licenſes, as alſo a Certificate, of the Civil Demeanours, and Fitneſs of themſelves for that purpoſe to be new Licenſed; and for Conveniency of Situation and Accommodation of their reſpective Houſes for that purpoſe. The ſame Certificate to be ſigned with the Hands, at leaſt, of two ſubſtantial, honeſt, diſcreet, and civil Inhabitants of the reſpective Pariſhes where they do now dwell. And have you there the Names of ſuch Perſons as you ſhall have ſo warned, together with the Names of the ſeveral Pariſhes, and places of the ſaid Pariſhes where their ſaid Houſes are ſituate, and by what Signs the ſame are known; to the end that ſuch of them be continued, and ſuch of them ſuppreſſed, as ſhall be thought fit. And have you there alſo this Precept. Given under our Hands and Seals at,* &c.

The Form of a Warrant for ſuppreſſing an Ale-houſe.

Middleſex. F. B. *and* L. D. *two of Her Majeſty's* Juſtices *of Peace, within the ſaid County of* N. *To the Conſtables of* S. *and either of them, Greeting.*

WHereas we are credibly informed, that R. N. *of your Town, Victualler, is himſelf a Man of Evil Behaviour*

viour, and beſides doth ſuffer Evil Rule and Diſorder to be kept in his Houſe, contrary to the Laws and Statutes of this Realm, Theſe are therefore to Will and Command you, forthwith to repair to the Houſe of the ſaid R. N. *and to charge him to ſurceaſe keeping any longer any Ale-houſe, or Tipling-houſe, and from common ſelling of Ale or Beer at his Peril; and withal, that you cauſe his Sign to be pulled down. And hereof fail not, as you, and either of you, will anſwer the contrary at your Peril. Given under our Hands and Seals at* N. *the-----Day of-------and in the-----Year of the Reign of our moſt Gracious Sovereign Lady Queen* Ann.

But it is uſual with the Juſtices, before they grant this laſt Warrant, or a Warrant to Levy Moneys forfeited by Ale-houſe-Haunters, to ſend for the Offenders, and examine them of the Offence, that the truth may be known; and that the Information be not upon the Account of Brangling or Malice between the Parties ſo Informed againſt, and the Party Informing, but the Truth known upon plain Conviction. Forfeitures in the latter Caſe may be Levied, upon refuſal to pay, by Diſtreſſes and Sale of Goods, and for want of ſuch Diſtreſs, the Offenders to be ſet in the Stocks, *&c.*

Apprentice.

Muſt be bound out by Indenture.

Maſter cannot ſend an Apprentice beyond the Sea, except he go with him: But may ſend him in any place in *England.*

Action of Account is not maintainable againſt an Apprentice.

By Cuſtom of *London* a Man may turn over his Apprentice to any other within the City. *March* 3.

Action lies by Maſter, for inciting an Apprentice to depart from his Service; ſo if inticed to take Money, or Play.

Doubted, whether the Quarter-Seſſions can diſcharge an Indenture of Apprenticeſhip, where the Apprentice

Apprentice was not impoſed upon the Maſter by the Juſtices, and compelled to ſerve.

One Juſtice may puniſh ſuch as, being between the Age of Ten and Eighteen Years, ſhall refuſe to ſerve as an Apprentice at Husbandry, *&c.* being required thereto, 5 *Eliz.* cap. 4. ſhall be committed until he will ſerve.

May allow Maſters to put away their Servants within the Term, if there be cauſe, but not their Apprentices: 5 *Eliz.* cap. 4. *Dalt.* p. 60.

May puniſh Maſters abuſing their Apprentices, and not obeying the Juſtice of Peace's Orders, 5 *Eliz.* cap. 4. Shall be bound to appear at the next Quarter-Seſſions.

A Form of a Warrant againſt a Maſter for abuſing his Apprentice.

Middleſex. *To the Conſtable,* &c. *of* L. &c.

Forasmuch as Complaint hath been made unto me by H. E. *an Apprentice,* &c. *againſt* N. L. *his Maſter, both of the Pariſh aforeſaid, That he the ſaid* N. L. *doth not allow his Servant competent Meat, Drink, and Apparel, and doth immoderately Correct him, without any cauſe at all, (or turneth him out of his Houſe, and will not ſuffer him to return)* [as the Caſe requireth.] *Theſe are therefore (in Her Majeſty's Name) to command you, that you, ſome or one of you, do cauſe both the ſaid Parties to come before me at* L. *on Tueſday the Tenth day of this Inſtant* May, *at Three of the Clock in the Afternoon, to the end that I may examine the ſame matter. Hereof fail not,* &c. *Given under my Hand and Seal this,* &c.

A Form of a Warrant againſt a Diſorderly Apprentice.

Middleſex. *To the Conſtable,* &c.

Forasmuch as Complaint hath been made unto me by R. H. *Barber, againſt* N. L. *his Apprentice, both of your Pariſh of* E. *in this County, That the ſaid* N. L. *is a ſtubborn and*

and disobedient Servant, and doth very much misbehave himself towards his said Master (or that the said N. L. *hath departed from his said Master,* &c.) *These are therefore,* &c. as in the foregoing Warrant.

The Form of a Warrant for a Fugitive Servant.

Surry. *To the Sheriffs,* &c.

WHereas H. N. &c. *being lawfully retained in Service with* L. R. *of* E. &c. *is departed from his said Master's Service before the end of his Term, without his Master's leave, or License, (or without any reasonable Cause) contrary to the Laws and Statutes of the Realm in this behalf provided. These are therefore to Command you, and every of you, that you, or some of you, do Attach the Body of the said* H. N. *and bring him before me, or some other of Her Majesty's Justices of the Peace, to find sufficient Sureties, well and faithfully to serve his said Master, according to the Covenant between them made. And if he shall refuse so to do, that then you cause him safely to be conveyed to the common Goal of the County aforesaid, there to remain till he shall be willing so to do the same, and see you certifie such your doings at the next General Quarter-Sessions of the Peace, to be held for the said County. Given under the Hand of me* E. D. *one of Her Majesty's Justices of the Peace of the said County. Dated,* &c.

Or thus, *That if the said* H. N. *is willing his said Master to serve again, you do cause him to be delivered, and if that so do he shall refuse, that then you cause him to be conveyed to the Goal,* &c.

Arrest and Imprisonment.

Arrest, is to restrain a Subject of his Liberty against his Will, or to detain him in the Custody of a proper Officer, legally authorized to do the same, until the Party, so Arrested, shall find Sureties (if Bailable by Law) for his Appearance before the Justice, &c. from whom the Process of Warrant Issued, to answer such Matters as are contained therein: Or in such cases,

caſes, where Bail is not allowable, the Officer ought to commit the Party to Goal, and there cauſe him to be Impriſoned, until he ſhall be from thence Diſcharged by due Courſe of Law.

If a Conſtable, *&c.* have a Warrant from a Juſtice of Peace, to bring any Perſon before him, he ought firſt to require him to go before the Juſtice; and if he refuſe, to compel him by Arreſt; for ſuch requiring is no Arreſt.

Any Perſon may be Arreſted, who is under the Degree of a Peer of the Realm of *England*, by Warrant under Hand and Seal of a Juſtice of the Peace.

A *Feme Covert* may be committed for a Force or Riot, but not an Infant; yet for not finding Sureties for the Peace, being demanded, an Infant may be committed.

For Miſdemeanours againſt the Queen's Peace, an Offender may be Arreſted by a Warrant; ſo that there be juſt Cauſe, or lawful Suſpition.

A Man who knoweth of a Robbery, may Arreſt a Perſon by him ſuſpected, and carry him to the Conſtable, if he be to be found, or otherwiſe Impriſon him in the Stocks; or in caſe there be none, carry him to the next Conſtable, or to the next Juſtice to be examined.

If a Robbery, *&c.* be known to be committed, any one may Arreſt a Perſon of ill Fame; and if he reſiſt may juſtifie beating of him.

If a Felony be committed, it is ſufficient cauſe to Arreſt any Perſon, that, upon ſearch, is found in Company of the Offenders; and ſo it is to live idly and as a Vagrant.

Watch-men may Arreſt Night-walkers, and if they ſuſpect them, juſtifie the detaining them until the Morning.

Juſtices of Peace, and Sheriffs, ought not to commit, or impriſon, any Perſon, but in the County Goal.

A Conſtable regularly ought to Impriſon in the Stocks.

If a Constable, by Warrant from a Justice of the Peace, Arrests a Person, and he escapes into another County, he may Arrest him there upon fresh Pursuit, and bring him before the Justice.

The Constable carries a Man, Arrested for Felony, into the Gaol, and the Gaoler refuseth him, he may be brought back to the Town where he was taken, and they shall be charged to keep him until the next Gaol-delivery: Or the Constable may keep him in his own House.

Bail.

Indictment removed by *Certiorari*, and no Bail put in above, the Court below may proceed (without a *Procedendo.*)

Where one is Bailable by Law, Action lies against the justice of Peace that committed him.

Convict of Felony is not Bailable, nor is it safe for Justices of Peace to Bail where a Person is but suspected of Felony; but this is Discretional in the justices.

The Bail in Murther, Felony, *&c.* may keep the Murtherer, Felon, *&c.* as a Prisoner, till the day of Appearance, for the Bail is *Corpus pro Corpore*; and if Murther, Felon, *&c.* escape, Bail must render themselves.

Justice of Peace may be Fined for taking slender Bail.

If Mainpernors (or those that become bound with a Prisoner for his Appearance) do doubt that the Prisoner will fly, they may bring him before a justice, who shall commit him, and discharge them; The like of a Person Bailed, as it seemeth.

Bastard-Child.

If the Two next justices make no Provision for Bastard, the Sessions must settle it, as the Two justices ought to have done.

Sessions

Sessions cannot originally make order to keep Bastard, but it ought to be made by the two next Justices to the place where the Child was born.

Maintenance of Bastard by Mother and reputed Father, is by these Modern Laws of 18 *Eliz.* cap. 3. and *Jac.* cap. 6. the former Laws were only for Punishment.

Not questioned for having one Bastard: Then she had another, she is not to be proceeded against by 7 *Jac.* (as for a second Offence.)

The two next Justices are not to commit for not obeying, their Order, but to take Recognizance for Appearance at Sessions.

Neither Sessions nor Assize can meddle touching Bastardy, but upon Appeal; (otherwise the two Justices must order.)

If two Justices make an Oath, if Party refuse to perform, or enter into Recognizance to appear at the next Sessions, they commit him without Bail.

If (by Practice and Design) a Child is born in a Parish, the Parish where the Practice was, shall keep the Child.

Bond to pay 20 *d. per* Week for keeping a Bastard. Defendant cannot plead that there were no Order made.

If a Harlot will take the Child whereof she is newly delivered, and cover it with Leaves, and let it lie abroad, whereby Vermin destroy it, this is Murther. 21 *Jac.* cs 27. *Cromp.* 24. *B.*

Indictment lies for Conspiring to charge one with a Bastard Child, and thereby also to bring him to Disgrace.

An Indictment was preferred against one, for Conspiring to accuse another with being the Father of a Bastard Child.

To make an Order for a Bastard Child, there must be two Justices, whereof one to be of the *Quorum.*

An Order made by 2 Justices for the maintenance of a Bastard Child, by 12 *per* Week, as long as the Child shall continue chargeable to the Parish, is good.

The Justices of Peace's Order must be paid Weekly and not Monthly.

A Baſtard Child of a Perſon able to keep it, and not ke to be chargeable to the Pariſh, is not within the tatute of 18 *Eliz.*

If the Father of a Baſtard Child dies poor, the Mother muſt provide for the Baſtard if able, but if not, he Town were laſt ſettled.

Neither Seſſions nor Aſſizes can meddle touching aſtardy, but upon Appeal.

The Seſſions cannot make an Order for keeping of Baſtard, except upon an Appeal from the 2 Juſtices, hich are firſt to make an Order.

he Form of a Warrant for a Reputed Father of a Baſtard-Child.

Middleſex, *To the Conſtable of* L. &c.

Whereas complaint hath been made unto me K. L. Eſq: *one of Her Majeſty's Juſtices of the Peace for the id County, by* S. T. *of your Town, ſingle Woman, that ſhe got with Child by* D. E. *alſo of your ſaid Town Taylor. heſe are therefore to will and require you, and in Her Maſty's Name ſtraitly to charge and command you, and either you, that immediately upon Receipt hereof, you Attach the dy of the ſaid* S. T. *and thereupon bring him before me, ſome other of Her Majeſty's Juſtices of the Peace for the id County, to find ſufficient Sureties, as well for his Appeance at the next General Seſſions of the Peace to be holden for is County, as alſo for his Good Behaviour towards Her Maſty, and all Her Liege People, in the mean time: And reof fail not, as you will anſwer the contrary at your Peril ated,* &c.

n Order of the Juſtices of Peace for a *Baſtard-Child*.

THE Order of D. G. *Eſq*; *and* N. R. *Eſq*; *two of Her Majeſty's Juſtices of the Peace for the County of . made for the Relief of the Pariſh of* E. *of the ſaid County, the keeping of* S. *a Baſtard Child, Begotten by* O. P. *of* &c, *on the Body of* H. T. &c.

Imprim-

Imprimis. *Upon the Examination of the aid* H. T. *duly by us taken, we do find that the said* O. P. *is charged to have divers times bodily and carnal Knowledge, between such Times,* [here name the Times] *and to be the only Father of the said Bastard-Child,* &c. *And therefore we do Order and Adjudge him the said* O. P. *to be the Reputed Father of the said Child.*

We do farther Order as followeth.

First, *That the said* H. T. *shall keep her said Child till it come to Eight Years of Age.*

Secondly, *That the said* O. P. *upon notice of this Order shall, after such notice, pay unto the Hands of one of the Overseers of the Poor of* E. *for the time being, after the Rate of* 2 s. 6 d. *every Week, to be be paid Monthly every Year towards the Relief of the said Child, until it come to Eight Years of Age.*

Thirdly, *That after the said Child shall come to the Age of Eight Years* &c. *that the said* O. P. *pay to the Overseers* &c. *Five Pounds towards putting out the said Child to be an Apprentice,* &c.

Fourthly, *That the said* O. P. *presently give good Security to one of the Overseers,* &c. *to perform this our Order.*

Note, That by altering the Names, and Sum, as the Order in that Case shall be made; this Order in Form with the Variation of the Town and County, may generally serve on this Occasion.

Begger.

To beg Meat and Drink (for necessity) in passing between one Town and another, is not begging to make one a Begger within the Statute, and such shall only be sent where born, or last legally setled, and not to the common Goal, as a common Begger shall be.

If a Wanderer with a Child under Seven Years of Age, die, *(in transitu)* Child shall be sent where born.

Pedlar carrying Wares to sell in private Houses (though in the same County) is a Vagrant and punishable.

The

The Form of a Warrant for apprehending Beggars, and other idle Persons.

Middlesex, *To the Constable and Headboroughs, and others Her Majesty's Officers of any of the Parishes in the said County, and to all others whom this doth or may concern.*

WHereas *the Suburbs of* London, *and Places adjacent, are now infected with many Rogues, Vagabonds and Sturdy Beggars, and other idle Persons, that can give no good Account of their Life and Conversation, to the danger of the Inhabitants, and contrary to the Laws and Statutes of this Realm: These are therefore (in Her Majesty's Name) straitly to charge and command you, and every of you, That, at all convenient times hereafter, taking with you a convenient Aid and Assistance, you make diligent search, in the several Places aforesaid, and in all other suspected Places, within any the Parishes in the said County, for all such Rogues, Vagabonds, and Sturdy Beggars, and other suspected and idle Persons; and them to apprehend to bring before us, or one of us, to be examined and dealt with according to Law. Hereof fail not,* &c. *Given under our Hands,* &c.

Blasphemy.

Blasphemous Words are not only an Offence to God and Religion, but a Crime against the Laws, State and Government, and Christianity parcel of the Laws of *England.*

Burglary.

Burglary, Is breaking and entring a Mansion-house in the Night, with a Felonious Intent, though it be not Executed,

Night, by some, is held to be after *Sun-set*, and before *Sun-rising*, but generally received to be in opposition to Day, when the Countenance of a Person cannot be discerned. *Dalt.* cap. 99. *Co. Pl. Cor.* cap. 14.

Entring

Entring a Houſe, (Doors open) a breaking; but no Burglary. Door or Window open, and Goods drawn out, no Burglary. But breaking Window, drawing Latch, unlocking Door, breaking Hole in Wall, make Burglary. So ſetting Foot over Threſhold, putting Hand, Hook, or Piſtol, within Window, or Door, or turning a Key (the Door locked within) is Burglary.

Divers come to commit Burglary, one does it (the reſt watching at the Lanes end) Burglary in all.

A Thief goes down a Chimney to Rob, Burglary. So Thieves raiſe Hue and Cry, and bring the Conſtable, the Owner opens the Door, they bind the Conſtable, and Rob the Owner, Burglary.

To break Glaſs in a Window of a Manſion-houſe in the Night, and with Hooks draw Goods out, and Steal them, it is Burglary, though no Perſon be in the Houſe.

The Servant opens the Window to let in a Thief, who comes in and Steals Burglary in the Stranger, and Robbery in the Servant.

If Thieves enter an Houſe through a Hole made before, no Burglary.

A Church, out-buildings, as Barns, Stables, or a Shop parcel of a Manſion-houſe; a Chamber in an Inns of Court, or Chancery, or in a Colledge, are Manſion-houſes; But a Booth is not, nor a Shop ſevered by Leaſe, where no Perſon lieth in the Night.

A Houſe broken open, with intent to commit Felony, is Burglary; but if to beat the Owner, or commit Treſpaſs, otherwiſe. If to commit a Rape, it ſeems to be Burglary, though the Felony be not done. Clergy taken away in all Burglary by 18 *Eliz.* cap. 6. *Hales's Pl.* 6. *Tit. Burglary, Shepherd's Grand Aſſ. Tit. Crown.*

Burning.

If I burn a Houſe wherein I am in Poſſeſſion by Leaſe, not Felony.

To make Felony it muſt be *edes alicujus.*

Wilfully to burn a Houſe is Felony without Clergy.

Church

Church and Church-wardens.

The Bishop of the Diocess cannot appoint Commissioners to Rate a Parish for Repairs of their Church.

The Spiritual Court hath Power to compel the Parish to repair the Church by their Ecclesiastical Censures, but they cannot appoint what Sums are to be paid for that purpose, because the Church-wardens, by the consent of the Parish, are to settle that.

If a Church be so much out of Repair, that 'tis necessary to pull it down, and that it cannot be otherwise repaired, in such case, upon a general Warning or Notice given to the Parishoners, or from House to House, the major part of them then present, and meeting according to such Notice, may make a Rate for pulling down the Church to the Ground, and building it upon the old Foundation, and for making Vaults where they are necessary; and though the Rate be higher than the Money paid for all this, yet 'tis good. And the Church-wardens are chargeable for the Overplus, they being not able to compute to a Shilling.

If any of the Parishioners refuse to pay their Proportion, according to the Rate, they may be libelled against in the Spiritual Court; and if the Libel alledge the Rate to be *pro reparatione Ecclesiæ* generally, though in strictness *Ecclesia* contains both the body and Chancel of the Church) and (by the Opinion both of the *Court of Common-Pleas*, and of the *Exchequer*) it shall be intended, that the Rate was only for the body of the Church.

The Bishop, or his Chancellor, cannot set a Rate on a Parish, but it must be done by the Parishioners themselves.

Church-wardens may make Rates themselves, if the Parishoners are summoned, and refuse to meet.

Drunkenneſs.

If twice Drunk, and Convicted, bound to Good Behaviour.

Drunkard may be puniſhed in Eccleſiaſtical Court, or by Juſtice of Peace.

Being a Drunkard, cauſe to remove a Magiſtrate.

For cauſe of Drunkenneſs, a Magiſtrate may be removed.

The Form of a Warrant for Drunkenneſs, the firſt Conviction.

Middleſex. *To the Conſtable of the Hundred of* K. *in the ſaid County, and to the Church-wardens of the Pariſh of*, &c. *in the County aforeſaid.*

FOraſmuch as it hath this preſent day been duly proved before me, That I. N. of the Pariſh of O. was on the 1 of April *laſt Drunk in the Pariſh (contrary to the form of the Statute in that caſe made and provided:) Theſe are therefore (in Her Majeſty's Name) to command you, that you the ſaid Conſtable or Church-wardens do require the ſaid* I. N. *to pay (for the ſaid Offence) to the Hands of you the ſaid Churchwardens (to be by you accounted for to the uſe of the Poor of the ſame Pariſh) five Shillings of lawful Money of* England *within one Week now next enſuing, and if the ſaid* I. N. *ſhall refuſe or neglect to pay the ſame as aforeſaid, that then you the ſaid Conſtable and Church-wardens (do levy to the uſe aforeſaid) the ſaid* 5s. *of the Goods of the ſaid* I. N. *by Diſtreſs and Sale of the ſame, (rendering unto him the Overplus of the Money remaining of the ſaid Sale,) and if the ſaid* I. N. *be not able to pay the ſaid ſum of* 5s. *that then you the ſaid Conſtable do ſet him in the Stocks, there to remain by the ſpace of* 5 *Hours. Hereof fail not at your peril. Given under &c.*

Convicted upon my view.

Convicted by his Confeſſion before me.

The

The ſecond Conviction.

Middleſex. *To the Conſtable of the Hundred of* K. *in the ſaid County, and to every of them, and to the Keeper of Her Majeſty's Goal for the ſaid County at* R. *in the County aforeſaid.*

Forasmuch as it hath been this preſent Day duly proved before me, That I. N. *of the Pariſh of* O. *was on the* 2d *of* April *laſt Drunk in that Pariſh (contrary to the Form of the Statute in that caſe made and provided:) And forasmuch as the ſaid* I. N. *hath been once before lawfully convicted of the ſaid Offence of Drunkenneſs: Theſe are therefore (in Her Majeſty's Name) to command you the ſaid Conſtable and Borſholders, that you, ſome or one of you, do cauſe the ſaid* I. N. *to come before me, or ſome other Juſtice of the Peace of the ſaid County, to be bound with two Sureties to Her ſaid Majeſty in the Recognizance or Obligation of* 10*l. with Condition to be from thenceforth of good Behaviour (according to the Form of the Statute in that caſe made and provided) which if he ſhall refuſe to do, that then you do him ſafely convey to the Goal aforeſaid, and deliver him there to the ſaid Keeper of the ſame, together with this Precept.) Commanding alſo you the ſaid Keeper to receive him into the ſaid Goal, and him there ſafely to keep, until he ſhall be ſo bound with two Sureties as aforeſaid. Hereof fail not at your Peril. Given under my Hand and Seal at,* &c.

Felony.

If the Sheriff or Bailiff, &c. having Warrant to Arreſt for Felony, kill the Offender, who will not obey, or ſuffer himſelf to be Arreſted, 'tis not Felony in the Officer.

So a Perſon that purſues by Hue-and-Cry, or otherwiſe, has Authority to Arreſt a Felon that flies.

A Felon breaking from his Conductors going to Goal, may be killed by them, if they cannot otherwiſe take him.

That which in theſe Caſes makes the killing diſpuniſhable

niſhable, is, becauſe they acted by an Authority, with out any Malice, which, if proved, may alter the caſe

The Form of a Warrant to Attach a Felon, or one for Felony.

Middleſex. *To the Conſtables of* E.

Forasmuch as complaint hath been made unto me N. *that of late he hath had certain Goods Feloniouſly tak from him; and that he hath in Suſpicion one* R. H. *of yo ſaid Town. Theſe are therefore to Will and Require you, a in Her Majeſty's Name ſtraitly to Command you, and ev of you, that immediately upon the receipt hereof, you do A tach the Body of the ſaid* R. H. *and thereupon to bring h before me to Anſwer the Premiſſes, and hereof fail not a your Perils.* Dated, *&c.*

The Form of a Warrant for a Perſon who hath da geroufly Hurt, or Wounded another, *&c.*

Middleſex. *To the Conſtables of* E. *&c.*

For asmuch as I am credibly informed that B. A. *of yo Town, Shoe-maker, hath now, or lately, dangerou Hurt, or Wounded, one* E. D. *of your ſaid Town, Taylor, a Blow, or Blows, which he hath given to the ſaid* E. D. the Face and Head, &c. *ſo that the ſaid* E. D. *is in dang of Death thereby. Theſe are therefore in Her Majeſty's Na ſtraitly to charge and Command you, that immediately u ſight hereof, you, or one of you, do bring the ſaid* B. A. *be me, or ſome other of Her Majeſty's Juſtices of the Peace of t County, to find ſufficient Sureties, as well for his Appeara before Her Majeſty's Juſtices, at the next General Goal-de very to be holden for this County, then, and there to Anſw unto the Premiſſes, and to do and receive thereof, that wh by the Court ſhall be Enjoyned him: As alſo, that he the ſa* B. A. *ſhall, in the mean time, keep the Queen's Peace, t wards Her ſaid Majeſty, and all her Liege People, and eſp cially towards the ſaid* E. D. *And hereof fail not at y* [illegible]. *Dated,* &c.

Form of a Warrant to bind Persons to give in Evidence against a Felon.

Middlesex. *To the Constables, &c. of, &c.*

THese are to require you upon sight hereof, to warn to be-before me, or some other of Her Majesty's Justices of the Peace of the said County, within two days next following, -B. C. D. E. F. &c. to the end that they may be found make their personal Appearance at the General Goal-delivery or Quarter-Sessions, to be holden for this County, then, nd there to testifie their Knowledge concerning a Felony supposed to be done by E. H. now a Prisoner in the Goal of N. nd that you do then go with them to the Justices with this Warrant. Hereof fail not, &c.

Goal.

Every County hath two Goals, one for Debt, which ay be in any House where the Sheriff will. The other for the Peace, and Matters of the Crown, which is he County Goal.

Goaler shall be answerable for Escapes, and if not fficient, *respondeat superior.*

If Goal broken by Thieves, Goaler is chargeable, otherwise if by Enemies.)

A Warrant to allow a Poor Prisoner Relief.

Middlesex. To D. E. Gent. Treasurer, for the Relief of the Prisoners, in Her Majesty's Goal for the said County at L. in the County aforesaid.

WHereas N. T. (now a Prisoner in the said Goal) is in very great Necessity, for want of present Relief r his Subsistence there. These are therefore (so far forth as us lieth) to appoint and authorize you the said Treasurer, allow unto the said N. T. competent Relief (during his Necessity) in the said Goal. Given under our Hands and eals the Fourth day of January. *Anno Dom.* 1703.

For a Prisoner to be Bailed.

These are to Charge and Require you, That immediately (upon your Receipt of this) you bring before me the Body of D. E. *now in your Custody, to be Bailed as Law requireth. Given under,* &c.

A Discharge of a Prisoner out of Goal.

Middlesex. *To the Goaler or Keeper of,* &c. *We* K. L. *and* C. B. *Esquires, two of Her Majesty's Justices of the Peace for the County aforesaid, send Greeting.*

Forasmuch as H. L. *of* E. &c. *Barber, hath found sufficient Sureties before us, for his Personal Appearance at the next Quarter-Sessions, to be holden at* E. *aforesaid. These are therefore (in Her Majesty's Name) to Require and Authorize you, That forthwith upon sight hereof, you Discharge the Body of* H. L. *aforesaid, if he be Detained for no other Cause, but upon* A. B. *and* E. F. *their Warrant, and this shall be your Discharge. Given under our Hands and Seals at* E. &c.

Good Behaviour.

Justice cannot bind to Good Behaviour upon a general Information, or commit for not finding Sureties upon such Information.

May break House upon Warrant for the Good Behaviour.

If Justice (for want of Sureties for Good Behaviour) commit (without good cause) False Imprisonment.

To say of a Mayor, he is a Fool, breach of Good Behaviour.

So to threaten Witnesses.

A Man cannot be Indicted for saying of a Justice of Peace, he understands not the Statutes of Excise, but may be bound to Good Behaviour.

House

House of Correction.

If delivered of a Child in the House of Correction, the Child must be sent to the Parish from which the Mother was sent.

A Rogue must not be sent to the House of Correction, but Whipped, and sent to the Place where last settled (if known) else to the place of Birth. But the House of Correction is for the Poor of the Parish, that refuse to Work.

Inmate.

The Statute of 35 *Eliz.* was made against such.

Inmates are, where there are more Families in one House than one, and they must be then at their own finding. Therefore if a Father entertain his Daughter and her Husband, *&c.* (no Inmates.)

Lord's-day, or Sunday.

Setting open Shop on that Day, is punishable by Statute Law.

Constable, for Arresting (for Good Behaviour) on that Day in the Church-yard, coming from Church, fined.

Insurrections, Affrays, *&c.* in breach of the Peace on that Day, must be suppressed.

The Stat. 29. of King *Charles* II. has made a great Alteration in divers Cases; for before that Statute, the Hundred was Chargeable for a Robbery, though done on a Sunday in time of Divine Service; also an Arrest on that Day had been good.

A License to Travel on the Lord's-Day.

To all Constables, &c.

THese are to Certify, That A. B. of D. &c. *where he now Dwelleth, having Informed me, that he hath a Brother*

living at G. *in the County of* H. *where he lieth now very Sick, and he had a Desire to see him. Know ye, That for that Cause, I do hereby License him to Travel upon the next Lord's-Day, the direct Way to his Brother, Willing and Requiring you, not to molest or hinder him for the same, so that he behave himself Orderly in his Travel. Given under my Hand, &c.*

Peace.

One thousand Pound Bond may be required for the Peace, (as the case may stand) *viz.* if the Person be so dangerous.

If he which is bound to the Peace break his Recognizance, he may be indicted for it, for it is a new Offence.

One bound to the Peace upon Malice, or for Vexation, may be discharged by the *Queen's Bench.*

Justice may take Money to lie *in deposito*, for Security of the Peace; and if break the Peace, the Money to be forfeited to the Queen.

Two Justices (though neither of the *Quorum*) may enquire of unlawful Assemblies, though they cannot determine the same.

The Form of a Warrant for the Peace.

Middlesex. *To the Constables of* E. *&c. and to either of them.*

FOrasmuch as G. H. *of your said Town, Yeoman, hath required Sureties of the Peace against* N. O. *of your said Town, Labourer, and withal hath taken his Corporal Oath before me, that he requireth the same, not for any private Hatred or Evil Will, but simply that he is afraid of his Life, or the Hurting or Maiming of his Body, or the Burning of his Houses: These are therefore to Will and Require you, in Her Majesty's Name, straitly to charge and command you, that immediately upon the Sight hereof, you, or one of you, require the said* N. O. *to come before me, or some other of Her Majesty's Justices of the Peace within the said County, to find sufficient*

sufficient Sureties, as well for his Appearance at the next Quarter Sessions of, &c. *to be holden for this County: As also that the said* N. O. *shall in the mean time keep Her Majesty's Peace, as well towards Her said Majesty, as towards all People, and especially towards the said* G. H. *and that if he shall refuse so to do, that then immediately you do convey the said* G. H. *to the common Goal of the said County, there to remain until he shall be willing to do the same; and see that you certifie your Doings in the Premises to the Justices of the said Sessions, and have there this Warrant, Dated at,* &c.

A Release of the Peace.

Midd. ss. MEmorandum, *Quod Tricesimo die Octobris, Anno Regni,* &c. *primo præfatus,* I. N. *venit coram me prædicto* N. R. *& Gratis remisit & relaxavit (quantum in ipso est) prædictam securitatem pacis, per ipsum versus infra nominatam Prudentiam Pell, coram me positam, Dat die & Anno supradictis.*

The Form of a General Warrant for Misdemeanour.

Surry. N. L. *Esq; one of the Justices of the Peace,* &c. *to the Constables of* L. &c. *in the said County, and to every of them.*

THese are to *Will and Require you, in Her Majesty's Name, straitly to Charge and Command you, upon Sight hereof, to Attach, and forthwith to bring before me the Body of* R. H. *Tyler, to answer such Matters of Misdemeanour in Her Majesty's behalf, as shall be objected against him; and hereof fail not at your Peril. Given under my Hand,* &c. *(or) Dated,* &c.

Poor.

Assessment for them ought to be made according to the visible Estates of the Inhabitants there, (both real and personal;) but not for any Estate they have elsewhere. The Occupiers of the Lands (and not the Landlords) are to be taxed.

The Grandmother (being of Ability) had a poor Grandchild relieved of the Pariſh, who marrieth; her Husband is liable towards keeping the Child, for that his Wife was of ability when he married her; otherwiſe if ſhe had not been of ability. And the Seſſions muſt order what he ſhall contribute towards the Charge.

But the Statute of 43 *Eliz.* cap. 2. concerning the Poor, that enables Juſtices of Peace to Tax a Neighbouring Pariſh: The Juſtices may Tax any of the Inhabitants, but not the whole Pariſh.

A Warrant for the Overſeers of the Poor to give up their Accounts.

Surrey. *To the High Conſtable of the Hundred of B. &c.*

THeſe are in Her Majeſty's Name, to Charge and Command you forthwith to give Notice to the Church-Wardens, and Overſeers of the Poor of every Pariſh within your Hundred, That they do perſonally appear before us at *Guilford*, at the Sign of the *Roſe*, on *Monday* the 24th of *March* next coming, by Nine of the Clock in the Morning, or Forenoon of the ſame Day, to yield up, and make a true and perfect Account in Writing, Subſcribed with their Names of all ſuch Sums of Money, as they have Received, or Rated and Aſſeſſed, and not Received, for and towards the Relief of their ſeveral Poor of their ſeveral Pariſhes, and alſo of ſuch Stock (to ſet the Poor on Work) as is in their Hands, or in the Hands of any of the ſaid Poor, and of all other things concerning their Office, and hereof that they fail not at their, and every of their Perils. And further we Require you, that you give Warning to the Petty Conſtables of every Town, within your ſaid Hundred, that they, or one of them be alſo then preſent before us, to inform and certify us of the Names of ſuch other Perſons, as are meet and fitting to be Overſeers of the

Poor

Poor within their several Towns for this Year next ensuing, and hereof fail not at your Peril.

Note, *That this Warrant must be under the Hands and Seals of two Justices at the least, the one to be of the* Quorum.

The Form of a Warrant to the new Overseers to take their Charge.

Middlesex. *To the Overseers of* E. &c.

BY Virtue of a Statute made in the 43d Year of the Reign of our Sovereign Lady Queen *Elizabeth*, (Entituled *An Act for the Relief of the Poor.*) These are to Will and Require you whose Names are here under-written, That you, together with the Churchwardens of your Parish, for the Time being, do (according to the Form of the same Statute) take Order from Time to Time, for the Year to come, for the setting to Work the Poor within your Parish, and for raising a convenient Stock of some Wares or Stuffs in your Town, to that Purpose, and providing necessary Relief for such as are Lame or Impotent amongst you, and for the placing Apprentices, such Children whose Parents are not able to maintain them: And hereof see that you fail not at your Peril. Dated, &c. Under the Hands and Seals of us, &c.

This Warrant must be under the Hands and Seals of two Justices of the County.

Rape.

Upon one of Seven Years doubted by the Court, but not of Nine Years or above.

In Rape ought to be Penetration and *feminis emissio*; if aid to commit a Rape and be present, he is a Principal.

Indictment naught if not said *ipsam rapuit*, but need not say *carnaliter cognovit*.

Reprieve.

Reprieve.

Justices of Goal-delivery may (after the Sessions adjourned) Reprieve a Prisoner.

If after Reprieve (at another Goal-delivery) Prisoner prays his Clergy again, he may have it.

If Reprieved for six Weeks, and before that exipres, the Reprieve is enlarged by the Judges, good.

Rogue.

Is not to be sent to the House of Correction, but to be Whipped, and sent were last setled, (if known) otherwise to the place of his Birth. But the House of Correction is properly, for those that will not work.

If Inhabitants of the County go with Wares to sell at Houses in that County, they are Rogues.

Riot.

Fine upon Rioters cannot be less than 10 *l.* for the Principal, and four Marks a-piece for the rest.

Information against two Justices for not inquiring of a Riot, found against one of them, (good.

Stage-Plays may be indicted for Riot and unlawful Assemblies.

A Warrant for certain Riotous Persons.

Middlesex. *To the Constables, &c.*

Forasmuch as I am credibly informed by D. E. *Gent. that* G. H. *&c. and divers and sundry other Persons unknown, have come upon the Ground of the said* D. E. *in* L. *aforesaid, and there have been aiding and assisting to these Persons hereunder named, in forcible manner to carry away the Wood and Timber, &c. there of late growing, being the Wood and Timber of* D. E. *These are therefore (in Her Majesty's*

jesty's Name) to command you, and every of you, to Arrest as well the said Parties hereunder named, as the said Parties unknown, being shewed unto you by the said D. E. *and to bring the same before me, and this shall be your Warrant and Discharge. Given under,* &c.

Recognizance.

It is a Bond of Record, not to be taken but by a Judge or Officer of Record.

In case where Justice, *&c.* has Power to take Recognizances, if Party refuse to be bound, the Justice, *&c.* may send him to Goal.

All Recognizances taken by Justices of the Peace, must be made to Her Majesty in these Words, *viz.* (*Dom. Regina*) upon pain of Imprisonment, and such Recognizances are in the Nature of a Statute Staple.

A Recognizance is a Record presently before it be made up in form.

They must be certified the next Quarter-Sessions after they are taken.

When you take a Recognizance of any, it must be in Latin; set down the time of making it, the Principal's Name and Dwelling-place, and his Trade or Calling, and so of the others his Sureties, and bind them (in a Sum of Money) to Her Majesty; and that being done, you read the same Recognizance in English thus, (viz.) for the Peace.

YOU *A. B.* of *C.* &c. do acknowledge your self to owe unto our Sovereign Lord the Queen's Majesty *Twenty Pounds.* And you *C. D.* of *H.* &c. and *E. F.* of *L.* &c. her Sureties, do likewise each of you acknowledge to owe unto our said Sovereign Lady the Queen's Majesty *Ten Pounds* a-piece, to be levied of your several Goods and Chattels, Lands and Tenements, to her said Majesty, her Heirs and Successors: Upon Condition, That if the said *A. B.* shall personally appear before our said Sovereign Lady the Queen's Majesty's Justices of the Peace at

at the next General Seſſions of the Peace to be holden for this Borough of *A.* and do then and there make anſwer unto all ſuch Matters which on Her Majeſty's behalf ſhall be objected againſt him; and in the mean time to keep the Peace towards our ſaid Sovereign Lady the Queen's Majeſty, and all his Liege People, but eſpecially towards one *G. H.* and do not depart thence without Licenſe from the Court, then your *Recognizance* to be void, or otherwiſe to ſtand in full force.

The Recognizance being made, is to be ingroſſed in Parchment, and ſubſcribed with the Juſtice's Hand only. But he that enters into it, need not put his Hand nor Seal to it.

Note, All Recognizances for the Peace, are to be ſtiled, *At the next Seſſions of the Peace.* And for Felony, *At the next Gaol-delivery.*

If the Recognizance be to appear before the Juſtices of the Peace within Forty Days next after the Date or taking of the Recognizance, *and before the end of the Forty Days, a General Seſſions of the Peace ſhall be holden,* &c. *the Party muſt appear before them at the ſame Seſſions, though it be not ſo expreſs'd,* &c. Bracton Condition 208. Cromp. 123. Dalt. 277.

The manner of entring the Note of Recognizances in your Book of Recognizances.

[A. B. *de* C. *&c. xx li. ad Comparendum ad proximam*
[*Seſſionem Pacis & Conſervare verſus* C. D.

{ E. F. *de* C. *&c.* & C. H. *de* C. *&c.* }

Bound over for the ſuſpicious Stealing of a [*Horſe*] being the Goods of *A. H. &c.* [*or as the Caſe requireth*]

R. P. *de Paroch.* A. &c. Victualler - - - 10 *l.*
R. S. *de Paroch.* A. &c. Victualler - - - 5 *l.*
P. S. *de Paroch.* A. &c. Victualler - - - 3 *l.*

Sw

Sub Conditione quod prædict' R. P. *bene & fideliter observabit omnes & singulos Articulos in Licentia sua pro Tipulatione Content'*

Capt' & Recogn' xx die Maij,]
Anno Dom. 1702. *Coram Nobis*, &c.]

The Recognizance must be certified to the next Sessions or Goal-delivery where he or they is, are, or hath been Justices, that the Party so bound may be called: And if the Party make default, then the same is there to be recorded; and the same *Recognizance*, with the Record of that Default, shall be sent and certified in the *Chancery*, the *King's-Bench*, or into the *Exchequer*.

Every Condition of a Recognizance must have these things.

1. It may be in English.
2. It may have the first Words, [*The Condition of this Recognizance is such, That if the above-bounden* A. B. *&c.*]
3. It must shew what he is bound to do: As, [*Personally to appear at the next* Quarter-Sessions *to be holden for the County of* L. *and in the mean time to be of* Good Behaviour *towards our Sovereign Lord the King, and all his People,*] or as the Case requireth.
4. To Close thus, [*That then this* Recognizance *to be void, or else to stand in force.*]

All this may be done on the back of the Recognizance, *or underneath it.*

A single Recognizance.

Midd. ss. MEmorandum, *Quod quarto die* Januarij *Anno Reg. &c. primo* A. B. *de* C. *in Com' præd'* Yeoman, *personaliter venit coram* R. K. *Armig' uno Just' dict' Dom' Regis ad Pacem in Com' prædict' Conservand' Assign' & Recognovit se debere dict' Dom' Reg. decem libras bonæ & legalis monetæ* Angliæ, *de Bonis & Catallis, Terris*

Terris & Tenementis ſuis fieri & levari, ad opus dict' Dom' Regis Hered' & Succeſſor' ſuorum, ſi defecerit in Conditione indorſat'.

To prefer an Indictment, and give Evidence.

Midd. ſſ. MEmorandum, *Quod quarto die* Septemb. *Anno Regni, &c. primo* A. B. *de* D. *in Com'* L. Yeoman, *in propria perſona ſua venit coram me* R. K. *uno Juſticiariorum dict' Dom' Reginæ ad pacem in dicto Com' conſervandam, necnon ad diverſa Felonias Tranſgreſſiones, & alia malefacta in eodem Com' perpetrat' audiendum, & determinandum aſſignat'. Et cognovit ſe debere dict' Dom' Reginæ quadraginta Libras de Bonis & Catallis, Terris & Tenementis ſuis ad opus dict' Dom' Regis levandas, ſub Conditione indorſata,* viz.

For two to give Evidence.

Midd. ſſ. MEmorandum, *Quod decimo die* Septembris *Anno Regni, &c. primo* W. B. *de* S. *in Com' prædict'* Husbandman, & W. R *de* S. *in eodem Com'* Husbandman, *in propriis perſonis ſuis venerunt coram me* R. K. *uno Juſticiar' &c. ad pacem in Com' prad' conſerv' necnon ad diverſa Felonias, Tranſgreſſiones & alia Malefacta in eodem Com' perpetrat' audiend' & determinand' aſſignat'. Et uterque eorum per ſe cognovit ſe debere dict' Dom' Reginæ viginti libr' de Bonis & Catallis, Terris & Tenementis ſuis ad opus dict' Dom' Reginæ levandas, ſub Conditione indorſata.*

Robbery.

Robbery is a felonious and violent taking away from the Perſon of another, Money or Goods to any Value, putting him in fear, which diſtinguiſhes a Robber from a Cut-purſe.

An Aſſault to rob, *without taking away*, no Felony.

All that come to rob are Principals, though one only actually do it.

Taking

Taking a thing in my preſence, is, in Law, a taking from my Perſon by Aſſault, or putting me in a fear.

But if without putting me in fear, by Aſſault or Violence, no Robbery.

D. and *L.* attempted to rob two others, *D.* robbed one of them out of the Sight of *L.* he was charged as Principal.

A Thief took 40 *s.* from one in the Highway, without putting him in fear, adjudged a bare Felony, for which he had Clergy, 5 *Eliz.* But now it ſeems, by 8 *Eliz.* cap. 4. Clergy is taken from ſuch an Offender.

The Puniſhment of this Offence is Death, without Clergy. The Party robbed hath his Action againſt the Hundred.

If a Robbery be done after Day-break, and before Sun riſing, the Hundred ſhall be chargeable with it.

But if on the Lords-day, the Hundred ſhall not be charged, but the Inhabitants ſhall make purſuit according to 27 *Eliz.* on forfeiture of as much Money as was loſt, 29 *Car.* 2. cap. 7.

The Form of a Hue and Cry after Robbery, *&c.*

To all Conſtables and others, Her Majeſty's Officers, as well within the County of Surrey, *as elſewhere within the Realm of* England.

WHereas *Complaint hath been made unto me* J. W. *Eſq; one of Her Majeſty's Juſtices of the Peace within the County of* Surrey, *by* J. N. *of* R. *&c. Graſier, that upon* Friday-night *laſt, being the* 25*th of* Septemb. *Inſtant, he was Robbed of one Hundred Pounds in Moneys numbred, by two Foot-padds on the Road, or King's High way, between* K. *and* H. *in the Day time; and hath Cauſe of Suſpicion of* I. K. *and* H. K. *two Lewd Rogues.* Here deſcribe their Perſons and Apparel, Setting down all ſuch Marks as they may be known by. *Theſe are to require you, and every of you, to make Search within your ſeveral Precincts for the ſaid* I. K. *and* H. K. *And alſo to make Hue and Cry after them from Town to Town, and County to County, and that as well with Horſe-*

Horse-men as Foot-men, and if you shall find them the said K. *and* H. K. *both, or either of them, That then you carry the Party, or Parties so taken, before some one of the Justices of the Peace within the County where he or they shall be taken by him to be dealt with according to Law, &c.*

And thus you may do, putting one, two, or more Names in, according as the Case requires, whether a Robbery on the High-way, or a Felony and Burglary committed in a House, or such like, in Barns, Stables, Out-houses, Stealing of Horses, or other Cattel, always describing the Parties in the Hue and Cry. So that they may be known; as also things taken, that if the whole, or any part be found about them, or in their Possession, they may be known, and brought as a Testimony against them, upon Examination.

The Form of a Warrant to search after a Robbery Committed, directed to the High Constables.

WHereas there have been of late many Robberies committed about E. *Now for the better finding out such Lewd Persons, we whose Names are here under-written, being Her Majesty's Justices of the Peace for the County of* Surry *have thought fit, and do hereby Will and Require you in Her Majesty's Name, that forthwith you direct your Precepts to every Petty Constable within your several Hundreds, Commanding them to make Search in all Inns, Ale-houses, and other suspected Houses within your Precincts, for all such Persons as are Masterless, or out of Service; as also for all Idle Vagrant, Wandring Rogues, Beggars, and other Persons. And farther, That they the Petty Constables within the Precincts, do take Examination and account of all those, and such other Persons, to be common Ale-house Haunters, or who expend their Money in Riot, or which do not Labour for their Living, and have not whereon to maintain them; and that the same Searches be holden all over your Hundreds the same Night, and at such other several times, as in your Discretion shall seem meet. And if any such Persons shall be found in the same Searches, and that upon yours, or the Petty-Constable's Examination taken of them, or any of them, there shall*

be found any cause of Suspicion in them, or any of them, that then they bring the said Persons, so suspected, before us, or some one of us, or some other of the Justices of the Peace of this County, to be farther examined in the said Causes, and to be farther dealt withal according to Law and Justice. And for the better doing hereof, we require you to command in Her Majesty's Name, that every Petty-Constable within their respective Precincts, do Require and Charge two chief discreet Headboroughs in every Parish, to assist the Petty-Constable in this Service. And hereof fail not at your Peril, &c. Dated, &c.

Sessions.

Justices of the Peace may keep their Sessions at which place of the County they will, if they be not restrained by a Statute.

Sessions may commit a Justice for breaking the Peace.

A private Sessions of the Peace is not said to be held for the County.

Order of Sessions quashed: Which was to keep his reputed Child, and doth not shew that it was a Bastard.

Sessions cannot meddle with a Statute or Forgery, Non-residence, Witchcraft, *&c.* or other Offences by Statute, where Power is not thereby given them.

Strictness of Words not required in an Order of Sessions, though it ought in an Indictment.

Yet Formality of Words are necessary in some cases, in the Proceedings of Justices of Peace.

Order of Sessions final in relation to a Settlement of the Poor.

The *Court of King's-Bench* may judge of Fines imposed at Sessions, and mitigate them.

Supplicavit.

Is directed from the *Chancery*, to the Sheriff and Justices of the Peace of the *County*, to mind to the Good Be-

Behaviour, and it must be returned under the Hands and Seals of the Justices.

Upon special Supplicavit out of *Chancery*, may be committed for want of Sureties.

It is a judicial Writ, and cannot be executed by Deputy.

He that first receives the Writ, has the sole Power of executing it.

Wages.

The Justices ought to certifie into *Chancery*, their Rates of Wages made at *Easter*, though they then but continue the same that were the Year before.

Statute of Wages pleaded to retainer of a Shepherd, and that Statute as to Wages explained

Action of Debt for Wages lies against an Executor, but that must be where one is retained, that is compellable to serve.

In an Action upon the Statute of Wages, Master cannot wage his Law.

Watch and Wards.

Every Justice of Peace may cause Night-watch to be duly kept for the Arresting Persons suspected, and Night-walkers of evil Fame or Behaviour.

This Watch is to be kept Yearly, from the Feast of the Ascension, till *Michaelmas*, and to continue all Night.

None but Inhabitants in the same Town, are compellable to Watch, and the *Constable* may set such Inhabitants as refuse to Watch, in the Stocks, or upon complaint thereof to the Justices of Peace, Party refusing, may be bound to his Good Behaviour.

A

A Warrant to appoint a Watch

Middlesex. *To all Constables, and others Her Majesty's Officers whom these may concern, within the Parish of,* &c.

These are (in Her Majesty's Name) to Will and Require you from time to time, to appoint and settle sufficient Watches. (to meet at 9 at Night, and not depart till 6 in the Morning, amongst whom a competent Number of Housekeepers are always to be present.) And you, and every of you, are to bring to the Names and Conditions of your respective Watches at our said Weekly Meetings, that the Performance of your Duties herein, may be better known and taken notice of; Her Majesty (in Council) having given us strict Command herein. You are likewise to give us an Account of all such as Arm themselves beyond their Qualities, and to use your utmost Endeavours, by all the ways imaginable, to preserve Her Majesty's Peace, during Her Absence from the City. Dated this 9th Day of May, 1700.

A Warrant to search for, and apprehend Persons suspected for Treason.

Middlesex. *To the Constable,* &c.

Whereas A. B. *and* C. D. *are vehemently suspected to have committed Treason, whereof I have received Information: These are therefore (in Her Majesty's Name) straitly to charge and command you, and every of you, upon Sight hereof without any Delay, to make diligent Search for the Bodies of the said* A. B. *and* C. D. *and them, or either of them, so found, to Attach and Arrest, and immediately upon such Arrest, to bring before me, at my House at* E. *in the said County whereof you are not to fail at your Peril. Given under,* &c.

When any of them *Traytors* shall be brought before the Justice, he must take the Examination of them in Writing

Writing (but not upon Oath) but all Circumſtances whereof he ſhall receive Information from the Accuſers, and upon ſuch other Circumſtances as he in his own Diſcretion ſhall think fit, for the Diſcovery of ſuch *Treaſon.*

A Form of a Warrant immediately in the King's Name, Grantable by Juſtices of the Peace.

ANNE, *By the Grace of God, Queen of* England, *&c. To our Sheriffs of our County of* M. *the High Conſtables of the Hundred of* D.--- *The Petty Conſtables of the Town of* E--- *And to all, and ſingular, our Bayliffs, and other Magiſtrates of the ſaid County, as well within Liberties as without, Greeting, Foraſmuch as* K. L. *of* &c. *hath come before Sir* H. L. *Knight and Baronet, one of our Juſtices of the Peace within the ſaid County, and hath,* &c. *Concluding in the Juſtices Name thus. Witneſs the ſaid* H. L. *at* D. *the* --- *Day of* --- &c.

Here *Note*, That where-ever the Warrant is made in the Queen's Name, as afore, there it ſeemeth it ought to be directed to all Miniſters, as well within Liberties as without; for the Queen is made a Party; and ſo it may be done it ſeemeth in all other Warrants, eſpecially for Felony, or for the Peace, or Good Behaviour, *&c.* becauſe it is the Service of the Queen, and no Franchiſe or Liberty ſhall be allowed, or hold place againſt the Queen, *B. Franch.* 31. However it is farther held, That the Juſtices of the Peace of the County, may not intermeddle in any City, Town, or Liberty, which have their proper Juſtices. *Vide Dalton*, chap. 6. fol. 25. where you will find it ſet down more largely.

The Form of a Warrant to ſearch for Stolen Goods. Com. Middleſex. *To the Conſtable of* K. *&c. and to either of them.*

WHereas *Complaint hath been made to me* L. R. *Eſq; one of the Juſtices of the ſaid County, by* D. E. *of* G. *Th*

That upon Tuesday Night last, he had Feloniously taken from him certain Goods [here name them.] *And that he is given to understand, that there are divers Parcels of such Goods, in the Hands, or Houses, of divers suspected Persons within your Town: These are to Will and Require you, and in her Majesty's Name, Straitly to Charge and Command you, that immediately upon the Receipt hereof, you make diligent Search in all and every such suspected Houses, and Places, within your Town and Parish, as you, and this Complaint, shall think convenient; and if, upon your said Search, you find any of the said Goods, or any other just Cause of Suspicion, that then you bring all such suspected Persons as you shall find, together with the said Goods, before me or some other of Her Majesty's Justices of the Peace for the said County, to make Answer thereto, and hereof fail not at your Peril, Dated, &c.*

Of the Succession of the Crown, sitting of Parliaments, and Tryals of Treason.

AND now, to divert my Reader a little with what Provision the Parliament of *England* hath made, for the Settling the Crown upon the Head of a Protestant Prince, whereby the Rights and Liberties of English-men may be defended from the Usurpations of Tyranny and Arbitrary Power, I shall insert the Declaration, *&c.* presented to Their late Majesties by the Lords Spiritual and Temporal, and Commons, assembled in Parliament, upon their Accession to the Throne.

WHereas the late King James *the Second, by the Assistance of divers Evil Counsellors, Judges and Ministers, employed by him, did endeavour to Subvert and extirpate the Protestant Religion, and the Laws and Liberties of this Kingdom; By Assuming and Exercising a Power of Dispensing with, and Suspending of Laws, and the Execution of Laws, without consent of Parliament: By Committing and Prosecuting divers Worthy Prelates, for humbly Petitioning*

Petitioning to be excused from concurring to the said Assumed Power; by Issuing, and causing to be Executed, Commission under the Great Seal, for Erecting a Court, called, The Court of Commissioners for Ecclesiastical Causes. By Levying Money for and to the Use of the Crown by Pretence of Prerogative for other Time, and in other Manner than the same was Granted by Parliament. By raising and keeping a Standing Army within this Kingdom in time of Peace, without Consent of Parliament, and Quartering Soldiers contrary to Law. By causing several good Subjects, being Protestants, to be Disarmed at the same time, when Papists were both Armed and Employed, contrary to Law. By Violating the Freedom of Election of Members to serve in Parliament. By Prosecutions in the Court of King's-Bench, for Matters and Causes cognizable only in Parliament; and by divers other Arbitrary Illegal Courses.

And whereas of late Years, Partial, Corrupt and Unqualified Persons have been returned and served on Juries in Trials, and particularly divers Jurors in Trials for High Treason which were not Free holders. And Excessive Bail hath been required of Persons committed in Criminal Cases, to elude the Benefit of the Laws made for the Liberty of the Subjects: And Excessive Fines have been imposed; and illegal and cruel Punishments inflicted: And several Grants and Promises made of Fines and Forfeitures before any Conviction or Judgment against the Persons upon whom the same were to be Levied. All which are utterly and directly contrary to the known Laws, and Statutes, and Freedom of this Realm. And whereas the said late King James the Second, having Abdicated the Government, and the Throne being thereby vacant, His Highness the Prince of Orange (whom it hath pleased Almighty God to make the Glorious Instrument of Delivering this Kingdom from Popery and Arbitrary Power) did (by the Advice of the Lords Spiritual and Temporal, and divers Principal Persons of the Commons) cause Letters to be written to the Lords Spiritual and Temporal, being Protestants; and other Letters to the several Counties, Cities, Universities, Boroughs, and Cinque Ports, for the chusing of such Persons to represent them, as were of right to be sent to Parliament, to meet and sit at Westminster, upon the Two and

nd twentieth day of January, *in the Year One thousand six* undred eighty and eight, *in order to such an Establishment,* s that their Religion, Laws and Liberties might not again e in danger of being subverted: Upon which Letters Elections having been accordingly made.

And thereupon the said Lords Spiritual and Temporal, and mmons, pursuant to their respective Letters and Elections, eing now Assembled in a full and free Representative of this ation, taking into their most serious Consideration, the best eans for attaining the Ends aforesaid; Do, in the first lace, (as their Ancestors in like case have usually done) for e Vindicating and Asserting their Ancient Rights and Liberties, Declare, that the pretended Power of Suspending of Laws, or the Execution of Laws by Regal Authority, without nsent of Parliament, is Illegal. That the pretended Power Dispensing with Laws, or the Execution of Laws by Regal uthority, as it hath been assumed and exercised of late, is egal. That the Commission for Erecting the late Court of mmissioners for Ecclesiastical Causes, and all other Commissions and Courts of like nature, are Illegal and Pernicious. at Levying Money for or to the use of the Crown, by prence of Prerogative, without grant of Parliament, for longer me, or in any other manner, than the same is, or shall be anted, is Illegal. That it is the Right of the Subjects to tition the King, and all Commitments and Prosecutions for such Petitioning, are Illegal. That the raising or keeping a Standing Army within the Kingdoms in time of Peace, less it be with Consent of Parliament, is against Law. That Subjects which are Protestants, may have Arms for their fence, suitable to their Conditions, and as allowed by Law. at Election of Members of Parliament ought to be free. at the Freedom of Speech, and Debates or Proceedings in rliament, ought not to be impeached or questioned in any rt or Place out of Parliament. That Excessive Bail ought to be required, nor Excessive Fines imposed, nor cruel and sual Punishments inflicted. That Jurors ought to be duly annelled and Returned, and Jurors which pass upon Men Trials for High Treason ought to be Free holders. That Grants and Promises of Fines and Forfeitures of particular sons, before Convicted, are Illegal and Void. And that

for Redress of all Grievances, and for the Amending, Strengthening, and Preserving of the Laws, Parliaments ought to be held frequently.

And they do claim, demand, and insist upon all and singular the Premisses, as their undoubted Rights and Liberties. And that no Declarations, Judgments, Doings or Proceedings to the Prejudice of the People, in any of the said Premisses, ought in any wise to be drawn hereafter into Consequence or Example. To which Demand of their Right, they are particularly encouraged to the Declaration of His Highness the Prince of Orange, *as being the only means for obtaining full Redress and Remedy therein.*

Having therefore an intire Confidence, That His said Highness the Prince of Orange, *will perfect the Deliverance so far advanced by him, and will still preserve them from the Violation of their Rights, which they have here Asserted, and from all other Attempts upon their Religion, Rights and Liberties; the said Lords Spiritual and Temporal, and Commons Assembled at* Westminster, *do Resolve, That* William *and* Mary, *Prince and Princess of* Orange, *be, and be Declared King and Queen of* England, France *and* Ireland, *and their Dominions thereunto belonging, to hold the Crown and Royal Dignity of the said Kingdoms and Dominions, to them the said Prince and Princess, during their Lives, and the Life of the Survivour of them: And that the sole and full Exercise of the Regal Power be only in, and executed by the said Prince of* Orange, *in the Names of the said Prince and Princess during their joynt Lives: And after their Deceases, the Crown and Royal Dignity of the said Kingdoms and Dominions, to be to the Heirs of the Body of the said Princess: And for default of such Issue, to the Princess* Ann *of* Denmark *and the Heirs of her Body: And for default of such Issue to the Heirs of the Body of the said Prince of* Orange. *And the Lords Spiritual and Temporal, and Commons, do pray the said Prince and Princess, to accept the same accordingly. And that the Oaths hereafter mentioned, be taken by all Persons whom the Oath of Allegiance and Supremacy might be required by Law, instead of them: And that the said Oath of Allegiance and Supremacy be Abrogated.*

I A. B: *Do ſincerely Promiſe and Swear, That I will be Faithful, and bear true Allegiance to Their Majeſties, King* WILLIAM *and Queen* MARY. *So help me God.*

I T. T. *Do Swear, That I do from my Heart Abhor, Deteſt, and Abjure, as Impious and Heretical, this damnable Doctrine and Poſition, That Princes Excommunicated or Deprived by the Pope, or any Authority of the See of* Rome, *may be Depoſed or Murthered by their Subjects, or any other whatſoever. And I do Declare, That no Foreign Prince, Perſon, Prelate, State or Potentate, hath, or ought to have, any Juriſdiction, Power, Superiority, Pre-eminence or Authority, Eccleſiaſtical or Spiritual, within this Realm.* So help me God.

Sitting of Parliaments.

This is the ſum and ſubſtance of ſo glorious a Foundation, whereon is Grounded the Liberty and Property of the Subject; and to remove all Doubts and Jealouſies from her Majeſty's good Subjects, about the ſitting of Parliaments, of whom the Nation ever expected the Redreſſing their Grievances. It is thus Enacted, 6 *W.* & *M.* c. 2. That from henceforth a Parliament ſhall be holden once in Three Years, at the leaſt. Within Three Years after the Diſſolution of this preſent Parliament, and ſo of every other Parliament hereafter, Legal Writs under the Great Seal, ſhall be iſſued, for Calling, Aſſembling, and Holding another New Parliament. From henceforth, no Parliament whatſoever ſhall have any Continuance longer than for Three Years only at the fartheſt, to be accounted from the Day on which, by the Writs, they are appointed to Meet.

Trials for Treaſon.

I. And for the better Remedy of Trials, in Caſes of Treaſon, it was Enacted, *Stat.* 7. *W.* 3. c 3. After the 25th day of *March* 1696. all, and every Perſon and Perſons, Accuſed and Indicted for High Treaſon, where-

by any Corruption of Blood may be made, or for Miſpriſion of ſuch Treaſon, ſhall have a Copy of the whole Indictment, but not the Names of the Witneſſes, Five Days at leaſt before he or they ſhall be Tried for the ſame, whereby to enable them to Adviſe with Council thereupon, his, or their Attorney, or Agent, requiring the ſame, and paying reaſonable Fees for Writing, not exceeding Five Shillings for the Copy of an Indictment: and that every ſuch Perſon ſo Accuſed, Indicted, Arraigned or Tried, &c. ſhall be admitted to make his full Defence, by Council learned in the Law, and to make any Proof, by lawful Witneſs, or Witneſſes, who ſhall then be upon Oath. And in caſe any Perſon ſo Accuſed or Indicted ſhall deſire Council, the Court before whom he ſhall be Tried, ſhall aſſign him ſuch Council as he deſires, not exceeding Two, who ſhall have free Acceſs to him at ſeaſonable Hours.

II. After the ſaid 25th of *March*, no Perſon or Perſons ſhall be Indicted, Tried or Attainted of High-Treaſon, whereby Corruption of Blood may be made, or of Miſpriſion of ſuch Treaſon, but by the Oathes and Teſtimony of Two lawful Witneſſes either both to the ſame Overt-Act, or One to One, and the other to another Overt-Act of the ſame Treaſon, unleſs the Party willingly, in open Court, confeſs the ſame, or ſtand Mute, or refuſe to Plead, or peremptorily Challenge above Thirty Five of the Jury.

III. Provided any Perſon Indicted of the Treaſons, or Miſpriſions of Treaſons, aforeſaid, may be Outlawed, and thereby Attainted, and in Caſes, when, by the Law, after ſuch Outlawry, the Party Outlawed may come in and be Tried, he ſhall, upon ſuch Trial, have the benefit of this Act.

IV. Where two, or more, diſtinct Perſons, of diverſes kinds, ſhall be alledged in one Bill of Indictment, one Witneſs to One, and another to the other, ſhall not be deemed two Witneſſes within the meaning of this Act.

V. After the ſaid 25th of *March*, no Perſon ſhall be pro-

proſecuted for any ſuch Treaſon or Miſpriſion, as aforeſaid, that ſhall be committed in *England*, *Wales*, or *Berwick*, after the ſaid 25th of *March*, 1696. unleſs the Indictment be found within three Years after the Offence committed. And none ſhall be proſecuted for any ſuch Offence, done before the ſaid 25th of *March*, unleſs Indicted thereof within three Years after the ſaid 25th day of *March*.

VI. Provided and Excepted, That any Perſon, deſigning and attempting any Aſſaſſination on the Body of the King, by Poiſon or otherwiſe, may be proſecuted at any time, notwithſtanding the ſaid Limitation. And all Perſons, Indicted for ſuch Treaſon, and Miſpriſon of Treaſon as aforeſaid, after the ſaid 25th of *March*, ſhall have Copies of the Jurors, who are to Try them two days at leaſt, before their Trial. And all Perſons ſo Indicted, ſhall have like Proceſs to compel their Witneſſes to appear for them, as is uſually granted for Witneſſes againſt them.

VII. No Evidence ſhall be admitted of any Overt-Act, that is not expreſly laid in the Indictment.

VIII. No Indictment for any the Offences aforeſaid, nor any Proceſs, nor Return thereupon, ſhall be quaſhed on the motion of the Priſoner, for Miſ-writing, falſe or improper Latin, unleſs Exception for the ſame be made by the Priſoner, or his Counſel, before Evidence given in Court. Nor ſhall any Miſ-writing *&c.* after Conviction, becauſe to Arreſt Judgment; yet any Judgment given upon ſuch Indictment, may be Revers'd upon a Writ of Error, in the ſame manner, as if this Act had not been made.

IX. Upon the Trial of any Peer or Peereſs for Treaſon, or Miſpriſon, all the Peers, who have a Right to Sit and Vote in Parliament, ſhall be duly Summoned Twenty days at leaſt, before ſuch Trial, to appear at ſuch Trial, and Vote at the ſame, every ſuch Peer firſt taking the Oaths in the Act of Parliament, made 1 *W.* and *M.* and alſo ſubſcribing and repeating the Declaration mentioned in the Act made 30 *Car.* 2.

X. This Act not to extend to any Impeachment, or either Proceeding in Parliament: Nor to any Indictment of High-Treaſon, nor any Proceedings thereupon, for Counterfeiting Her Majeſty's Coin, Her Great Seal, Privy-Seal, Sign-Manual, or Signet.

Directions for Drovers, Badgers, Butchers, Innholders and Tanners, &c.

NO Licenſe ſhall be put in open Seſſions, for Drovers, Badgers, *&c.* A Drover is meant here, one that Buys Cattle in one place, and carries them to another to Sell. A Badger is one that buys Corn, or Victuals, in one Place, and carries it into another. Either of theſe, ſo Trading, muſt be a Married Man, and a Houſholder, Thirty Years or upwards, and Licenſed, under the Penalty of Five Pounds, by 5 *Edw.* 6. chap. 14. Alſo he muſt have dwelt three Years in the County, Selling in open Fair, or Market, for Proviſion of Houſes, not Prohibited to Badgers, Licenſed by 5 *Edw.* 8. againſt Ingroſſing; and theſe muſt give Bond not to Foreſtall, *&c.* not to buy Corn out of Fair, or Market, under the Penalty of Five Pounds, unleſs ſo Limited by ſpecial Words in the Licenſe.

The Moiety of theſe Forfeitures upon Fore-ſtalling, due unto the Party Informing upon the Statute of Fore-ſtallers, is to be levied by *Fieri Facias*, or *Capias*, to be Awarded by the Juſtices of the Peace, *Lamb.* 548.

Traders in Butter and Cheeſe prohibited in open Seſſions from Buying, if they do, are ſubject to the Penalties in the 3d and 4th of *Edw.* 6. chap. 11, and the 5th and 6th of *Edw.* 6. chap. 14. Notwithſtanding they extend not to ſuch Traders, Free-men of *London.*

None ſhall Ingroſs Oak-Bark, under Penalty of Forfeiting it, 1 *Jacobi* 21. So of Hides coming to Market, not buy, except of the Owner of the Beaſt, to be Spent in his Houſe, under the Forfeiture of 6 *s.* 8. *d.* for every one

one. Except out of 3 *Edw.* 6. Barly or Oats, to be made into Oatmeal. So things belonging to Butchers, Fiſhmongers, Poulterers, ſold again at reaſonable Rates. So Corn, Cattle, *&c.* reſerved in a Leaſe taken. Alſo Wine or Victuals, by Inn-keepers; dryed Fiſh, Corn, Butter, and the like, by Licenſed Badgers, *&c.* So Proviſion for a City, Shipping, Caſtles or Ports. So Fiſh brought by Perſons dwelling within a Mile of the Sea; So Wine, Oyls, and Forreign Victuals, (Fiſh, and Salt-fiſh excepted.) Excepted out of 3 and 4 *Edw.* 6. and 5. *Edw.* 6. chap. 14. Butter and Cheeſe bought by Free men of *London*, and ſold again in the Liberties of the ſaid City, Borough of *Southwark* and *Weſtminſter*.

A Butcher uſing the ſaid Craft, and alſo the Myſtery of a Tanner, loſeth for every day 6 *s.* 8 *d.* 1 *Jacobi* chap. 22. *Lamb.* 462.

Any Butcher that Gaſheth, Slaughtereth, or Cutteth the Hide of the Ox, or Steer, or Bull, or Cow, ſo that it is Impaired, loſeth 20 *d.* or that Wetteth, or Watereth any Hides, unleſs in *June*, *July* or *Auguſt*, or putteth to Sale any putrified or rotten Hides, for every one of them, loſeth 3 *s* 4 *d.* *Ibid.*

A Tanner uſing alſo the Myſtery of a Shoo-maker, Currier, Butcher, or any other Artificer, Uſing, Cutting, or Working in Leather, loſeth the Hides and Skins Tanned. *Ibid.*

None ſhall Foreſtall any Hides coming to a Fair, or Market, except ſuch as kill for the Proviſions of their Houſe, on Penalty of 6 *s.* 8 *d.* for every Hide.

None may buy, or contract for, or be-ſpeak any rough Hides, or Calves-skins, but only a Tanner, or Tawer of Leather, except Salt Hides, for the neceſſary uſe of *Ships* on Penalty of 6 *s.* 8 *d.* for every Hide ſo bought, or contracted for, 1 *Jac.* c. 22. *Lamb.* 463.

None may buy Tanned Leather, or Wrought, but ſuch as will convert them into made Wares, except Necks, and ſhreads of *Sadlers*, and *Girdlers*, upon Penalty to loſe the ſaid Leather, 1 *Jac.* c. 22. *Lamb.* 463.

All ſorts of *Spices* and Merchandizes Garblable in

the City of *London*, and the Liberties thereof, ſhall, for the uſual Fees, be Garbled by the Garbler, or his Deputy, before they be ſold, upon Penalty of the Forfeiture thereof, or the Value ſold for, and ſo if afterwards mixed with Garbles, 1 *Jac*: c. 19. *Dalt*. 131.

A Tanner putting to Sale any Inſufficient Leather, not thoroughly Wrought and Tanned, or not well and throughly dryed, and the ſame ſo found by the Tryers appointed, 1 *Jacobi*, c. 22. loſeth ſo much as is Inſufficient, *Lamb* 464.

A Fore-ſtaller is a Party, either he or ſhe who buys, or contracts for any Victuals, or Wares, before they come to the Fair, Market, or Port, or moveth any Party to Enhaunce the Price, and not to bring ſuch Victuals, or Wares, to any Market, Fair, or Port, *Lamb*. 450. Of which the Party being Convicted before the Juſtices of the Peace at the Quarter-Seſſions, by the Examination of two Witneſſes, or a Preſentment of Fore-ſtalling within two Years, for the Offence the firſt time, ſhall loſe the Goods and be Impriſoned two months, without *Bail* or *Mainprize*; for the ſecond Offence, loſe double the Value of the Goods, and be Impriſoned for the ſpace of ſix months; for the third Offence, to forfeit all their Goods, ſtand in he Pillory, and be Impriſoned during the Queen's Pleaſure, 5 *Edw*. 6. c. 14. *Dalt* 87. *Lamb* 576.

The Garbler of *London*, his Deputy, or Aſſign, in the Day-time, may enter any Houſe, Shop, or Ware houſe, to ſee if the Wares, *&c*. be Garbled; if not, to cleanſe them, and Forfeitures of this kind to go to the Queen and Informer, 1 *Jac*. c. 19. *Dalt*. 131.

All Bread, called Horſe-bread, muſt be of a lawful and ſufficient Size, according to the Price of Corn, as it is at a Rate in the Neighbouring *Markets* at that time, according to the 21 *Jacobi* 1. c. 12.

An Inn-holder, or Oſtler in a Thorow-fair Town, Corporate, or *Market-Town*, being a Baker, and one that hath been an Apprentice thereto for ſeven Years, may make Horſe-bread within his Houſe. *Ibid.*

An Inn-holder in a Corporation, or *Market-Town*, where

where there is a common Baker, that hath been an Apprentice therein Seven Years, may not make Horse-bread within his House, 32 *Hen* 8. chap. 14. 21 *Jac.* c. 12.

Directions for Coroners; His Fees, &c.

A Coroner's Office is very Ancient, and has been, and yet is, held in high Esteem; for the Lord Mayor of *London* is held to be Coroner there, 2 *Cro.* 531. And the Lord Chief-Justice of the King's-Bench is Sovereign Coroner of all *England*, 4 *Co.* 57, *b.* And he upon the view of the body of one killed in open view, as a Coroner, may make a Record returnable in the King's-Bench. *Ibid.*

But to come nearer to the intended Purpose, amongst other Matters, It is the Coroner's business to view the Bodies of such as come to Casual Deaths, make away themselves, or are made away by others, or suspected to be put out of the World by a violent Death, or Dying Languishing in Prison, where there may be any Suspicion the Party dyed not Naturally, but by hard Usuage, Starving, or that the Imprisonment caused his Death, &c. For he is to know, and certifie, how the King came to lose a Subject.

He is, says 3 *Inst.* Fol. 129. to have *Visum Corporis* of a Prisoner dying in a Goal, by reason of a Duress. And the Jury or Inquest, before the Coroner, is to be of Persons within the four next adjacent Villages, made by the Bayliffs or Constables, and no Challenge lies to any of them so legally Summoned on the Inquest, 1 *Cro.* 135. And upon View of the Body, and a strict Examination how the Party came by his Death, they must give in their Verdict to the best of their Judgment, according to the Evidence, or other Matters appearing to them, whether it be *Felo de se*, he killed or Drowned himself, &c. or Died by the Hand of other Person or Persons, or by the Fall of a House,

Wall, Timber, Kick of a Horſe, or any other Matter or Thing that brought the Party to an untimely End; and the Coroner being ſo ſatisfied, he is to give his Warrant for the Burial of the Party, according as it ſhall be found upon Verdict, and an Indictment may be grounded thereon, againſt ſuch Party or Parties as ſhall be found concerned. And in this caſe he has Power to commit and bind over Perſons accuſed before him of Murther, or the like, as he ſees cauſe. And for doing his Office of one Slain or Murthered, he may lawfully take 13 *s.* 4 *d.* of the Slayer or Murtherer; and if he have none, then of the Town where the Murther was committed, or the Murtherer ſuffered to eſcape. 3 *Hen.* 7. c. 1. *Lamb.* 434.

A Coroner refuſing to do his Office of one Slain by Miſadventure, without Fees, loſes 40 *s.* 1 *Hen.* 8. c. 7. *Lamb.* 434.

Writs ſhall be awarded to the Coroner, where the Sheriff is Party. The Writ of Covenant in a Fine, *Venire facias*, &c. 1 *Crompt.* 416.

One Perſon may be *Coroner* of the King's Houſe [Hoſtel] within the Verge, and of the County too, 4 *Co.* 46. *B.* But where there are ſeveral, one cannot meddle within the other's Juriſdiction. *Ibid.*

Coroners, as Miniſters, muſt all joyn, 4 *Co.* 57. *B.* A *Coroner*, to whom a Writ of Eſtrepement is directed, is to provide againſt Waſt, by taking *Poſſe Comitatus*. H. 7. c. 85.

An Appeal, or an Accuſation, by an Approver, is to be entred before the *Coroner*. 3 *Inſt.* 129.

A *Coroner* may be removed by being *Minus Idoneus*, 5 *Co.* 58. *B.*

A *Coroner* concealing and not doing his Office, through Fear, or for Prayer, or Affinity, *&c.* ſhall be Fined and Impriſoned for a Year, or three Years, if he cannot pay the Fine, by 3 *Eliz.* So of other Officers.

Coroners ought to certifie their Inquiſitions at the general Gaol-delivery, and not at the Seſſions, 1 and 2 *P.* and *M.* 13. *Lamb.* 365.

Coroners being Parties to the Exigents and Judges of the

the Outlawry, ought to be preſent at the Seſſions. *Ib.*

Coroners are Conſervators of the Peace, and may in ſome caſes commit Men to Priſon. *Ibid.*

There lies no Traverſe to an Indictment before the Coroner *ſuper viſum corporis.* 3 *Inſt.* 53.

Coroners may be convicted of Offences againſt the Statute, 1 *Hen.* 8. c. 7. by Examination of Witneſſes, and touching Extortions, or not executing their Office before the Juſtice of Peace. *Cro.* 130. *b. Lamh.* 435.

Coroner exacting above a Noble for the View, and 2 *s.* for his Clerk, Fined 40 *s.* See 1 *Inſt.* 149.

Dead Bodies.

The Law, ſays *Raſtal*, is, if a Man or Women, *&c.* be Wounded, and thereby in Peril of Death, the Party that did it, or was helping in doing it, being apprehended, may be committed and kept in Cuſtody, till it be perfectly known by the Teſtimony of Skilful Perſons, whether the Wounded Party will Live or Die of thoſe Wounds or Blows given. and if he Die, the *Coroner*, upon view of the Dead Body, ſhall enquire of him, or them that have done the Fact, whether Man or Woman, and take the Names of them that were preſent as Witneſſes, or any otherways knowing of it. Alſo he ſhall take eſpecial notice of the Abettors and Concealors in, or towards the Fact, or any way therein concerned, and ſo found, to inrol and certifie the ſame.

The *Coroner*, according to his Inqueſt, ſhall give in their Verdict, if there be cauſe; for he is to take care to proſecute the Offender or Offenders, if the Relations of the Deceaſed or others refuſe, or are ſlack in ſo doing, ſo that if any Man, *&c.* be Slain or Murthered, thereof the Slayers, Murtherers, Abettors, Maintainers and Comforters may be Indicted, and brought to Arraignment and Trial of the Iſſue, whether they are Guilty of the Murther, Man-ſlaughter, *&c.* or not Guilty, which may be done any time in a Year and a Day after the ſame Felony and Murther com-

committed, which must be dated from the time of the Wounding or beating, not from the time of the Dying, if the Party Languish, and live any time after, though somewhat considerable, as a Week, a Month, or more.

And the Wife, or Heir of the Person so slain, or Murthered, as the Case requires, may Commence his, or her Appeal, in proper Person, any time within the Year after the said Felony done, before the Sheriff, and Coroner of the County where the said Felony and Murther was done, or before the King in his Bench, or Justices of Gaol-delivery. And the Appellant in any Appeals of Murther, or Death of a Man, *&c.* where Battle by the Course of Common-Law seeth not, may make their Attorneys, and appear by the same.

And the said Appeals, after they be commenced, may be proceeded in to the end of the Suit and Execution.

If a Murtherer, or Man-slayer, escape, the Justices of the Peace have Power to enquire of such Escapes, and to certifie them in the *Queen's Bench*, and that after the Felony found; the Coroners deliver their Inquisitions before the Justices the next Gaol-delivery in the Shire, or County, where the Inquisition is taken; and they are to proceed against such Murtherers, if they be in Gaol, or else certifie the Inquisition in the *Queen's Bench*, or as it is worded, put the said Inquisition before the Queen in her *Bench*.

All such Coroners as are Remiss in their Office, or Duty of their Place, and make not their Respective Inquisitions upon the View of the Dead Body, and certifie not according as aforesaid, is ordained, every Coroner, for such Offence, Forfeits to the Queen 5 *l.* by 3 *Hen.* 7. *c.* 1.

And now, that the Coroner may not be ignorant what is Murther, I shall briefly lay it down in general, and many material Particulars.

Murther,

Murther, when Wilful, &c.

The Crime of Murther is, when a Man or Woman, upon Malice Propenſe, Precedent, or Fore-thought, doth Felonioufly kill another living within the Realm, or under the Protection of the King, whether openly, or privately done, or whether the Party ſlain, be *Engliſh*, or an *Alien*, Lamb. 237. Dalt. 342. Cromp. 21, a. Num. 1. Clergy taken away, 1 *Edw.* 6. And in this caſe Killing ſhall have Relation to the Death, and not to the Stroak. 4 *Coke* 42. *Crompt.* 21. *a.* Num. 1.

Malice is either expreſſed, *Crompt.* 21. *a.* *Dalt.* 241. or implied, *Lamb.* 239.

Malice Expreſſed, is in a Caſe where it is known there is Malice between the Parties, *Crompt.* 21. *a.* and is apparent, and where there is a preceding Falling out, or lying in wait, or Time and Place appointed, *Lamb.* 238. *Dalt.* 343.

Malice Implyed, is to be taken where a Man or Woman, *&c.* is killed ſuddenly without Defence, *Crompt.* 21. *a.* Numb. 2. *Dalt.* 343. As one buſie at Reading, or going over a Stile ſuddenly killed by a Party, or where one killeth another without Provocation, one Stabbed, and not having a Weapon drawn, Dying in ſix Months, theſe are Murther, and ſo noted by *Dalton*, *Lambert*, *Crompton* and others, and the Statute of Stabbing. 1 *Jac.* 1. c. 8. *Dalt.* 343.

To kill an Officer known in Executing Proceſs, *Dalt.* 343.

So to kill an Officer unknown, if he ſhew his Warrant; and if an Officer hath the King's Writ or lawful Warrant, though the Proceſs be Erroneous in Awarding, or one Proceſs taken for another, and the Officer be ſlain in Executing it, it is Murther, *Dalt.* 343. 2 *Cro.* 280. 9 *Co.* 68. *Lamb.* 240. So though the Arreſt were made in the Night-time. But where the Arreſt is Tortious, or where an Officer, not known, ſhews not his Warrant, or the Arreſt be made on the Lord's-day, uſually called *Sunday*, (by Stat. *Car.* 2.) it is but Man-ſlaughter. *Ibid.*

An

An Officer Whipping or Branding to Death, is Murther, 344. A Rioter killing an Officer, or Assistant, coming to Suppress a Riot, it is Murther in the Rioters, *Dalt.* 443. *Crompt.* 25. *B. Numb.* 28 *Lamb.* 241.

It is Murther to kill a Magistrate or Minister of Justice, in Executing his Office, or in keeping the Peace, *Crompt.* 25. *B. Numb.* 51. *Dalt.* 343.

One Assaulting another, after the Assault flyeth to the Wall, and then killeth the other, it is Murther; for he slew him in the said Malice wherein he did Assault him. *Lamb.* 239.

One Condemn'd to Die, is killed by a private Person without Warrant, or by the Judge who Condemneth him, or by the Officer contrary to the Judgment, it is Murther. *Dalt.* 340. *Lamb.* 240. 5 *Eliz.* 1. So a Physician or Surgeon, having Malice, applies a contrary Medicine, of which the Patient dies, *Dalt.* 344.

A Thief killing a True Man resisting, it is Murther of Malice Propense for here Malice is implyed by the Law, because the Thief came purposely to do an ill Act, though not purposely to kill the Man. See *Lamb.* 241. *Dalt.* 344. *Crompt.* 22. *a. Numb.* 13. 9 *Co.* 67.

A Person carrying his Sick Father, *&c.* and laying him in the cold Frost, *&c.* so that he dies, is Malice; for by it, the Law presumes, he intended his Death. So a Strumper, covering her Child with Leaves in the open Way, *&c.* to hide it, and a Beast tramples on it, and kills it, or a Cart goes over it, *&c.* *Lamb.* 240. *Dalt* 352. and of the former, *Dalt.* 344. *Lamb.* 240. And many the like Cases, too long to be here set down, where there is Malice fore-thought, Prepensed, or that the Law presumes, or implies it to be Malice in the Party who kills another, or sets on another to do it, by Assassinating, *&c.*

Homicide, Man-slaughter, Felo de se, *&c.*

Homicide, is either killing himself, *Felo, de se*, or by another; and *Felo de se*, a Man by killing himself, For-

feits to the King his Goods and Chattels, Real and Perſonal, and his Debts due by Speciality, *Dalt.* 341. But no Lands or Blood Corrupted, *ibid.* But his Goods are not forfeit till his Death. *ibid.*

Homicide is killing of a Man by Man, *Dalt.* 339, 349. *Ex vi Termini* comprehends Treaſon, Murther, *&c.* It is no difference whether the Party Slain be a *Denizen*, *Alien*, or *Engliſh* Man, if he lives under the King's Protection, *Dalt.* 340. *Lamb.* 237. *Crompt.* 221. *a. Numb.* 1.

To kill one Attained for Treaſon or Felony, or Outlawed for Felony, or Attainted in Premunire is Felony, by 4 *Eliz. Stamford.* 13. *Dalt.* 342. *Crompt.* 24. *a. Numb.* 39.

An Infant, or *non Compos: mentis*, does not forfeit, but a Lunatick killing himſelf out of his Lunacy, doth forfeit his Goods, *Dalt.* 340.

Homicide of another, is either Voluntary, or Involuntary; Voluntary is Murther, *vide* Murther, or Man-ſlaughter.

Man-ſlaughter is when two Men, *&c.* fight together on a ſudden without precedent Malice, and one of them kill the other, *Dalt.* 349. *Lamb.* 248. *Crompt.* 16. *a.*

Man-ſlaughter is either by Chance-medley, or *ſe defendendo*, forfeiture Houſe and Goods.

Chance-medley is Felony, but may have Clergy, *Dalt.* 349.

One Fighting breaks his Weapon, another ſtanding by puts one into his Hand, or otherways lends it him, and with it he kills another, it is Man-ſlaughter in the Lender, *Dalt.* 134. *Crompt.* 16. *b. Numb.* 12. *Lamb.* 252.

The Servant Fighting in his Maſter's Defence, tho' there were Malice in the Maſter, and not told to the Servant, and one be killed, *Lamb* 248.

So a Stranger taking part, *Lamb.* 238. is Chance-medley, *Dalt.* 348.

If two that were in Malice are Reconciled, and fall out upon a new Occaſion, and is killed, it is Man-ſlaughter only, *Dalt.* 350. *Lamb.* 250.

Se defendendo, is where one killeth another in the de-

defence of himſelf, or his, thereby to ſave himſelf, or his Poſſeſſions or Goods, or ſome other Perſon which he is bound to defend from Peril, and it is either againſt a Felon, Murtherer, Thief, or Loyal Subject, *Dalt.* 356. *Lamb.* 352.

Againſt a Loyal Subject, if he be Aſſaulted by another Man, he muſt fly ſo much as he may, till he be letted by ſome Wall, or other material Hinderance, that his neceſſity of Defence may ſeem Inevitable; and he ſhall be committed till the time of his Trial, loſe his Goods, and Sue out his Pardon, *Lamb.* 253. *Dalt.* 35. It is not material if he ſtrikes again before he gave any deadly Wound, if he flies to the Strait, *Dalt.* 357. 358.

If a Man fly to a Wall, and hold out his Weapon, if the Purſuer run upon it and is killed, it is *ſe defendendo*, and forfeiteth his Goods, *Crompt.* 28. *a. Numb.* 7. *Dalt.* 349. But if he had fallen on the Ground, and the other fall on it and kill himſelf, there is no loſs of Goods; for he could not fly, and the Slain is in a ſort *Felo de ſe*, ibid. *P. R.* 122. *b. Stam.* 16. *a.*

If a Man fall to the Ground, there his flying to a Strait is not neceſſary, becauſe he might be there inevitably killed, if he did not defend himſelf, *Dalt.* 347. 358.

An Officer or Miniſter of Juſtice Executing his Office, is not bound to fly. *Dalt.* 358. *Coke* 99, 98.

If a Servant kill one that robb'd or kill'd his Maſter, ſo it be done preſently, or in defence of his Maſter's Perſon or Goods, if he could not otherways have avoided the ſame. *Dalt.* 358. *Crompt.* 28. *Numb.* 2.

To ſhoot at one that comes to burn a Man's Houſe, is juſtifiable in him or his Servants. *Dalt* 356, *&c.*

In the Defence of the Poſſeſſion of a Man's Goods, or Houſe, he may juſtify to Beat him, but may not Kill him, though the Party come wrongfully to take his Goods, unleſs he be a Thief, *Dalt.* 158, *&c.*

To Kill a true Man in Defence of Houſe, Goods, or Land, is Man-ſlaughter, *Dalt.* 358. *Crompt.* 27. *b. Numb.* 4.

In-

Involuntary Homicide is either by Misadventure or Necessity.

The first is, when a Man, doing any lawful Act, killeth a Man: This is not Felony of Death, but he shall have his Pardon of Course for Life, and Lands, but forfeiteth his Goods, *Lamb.* 254. *Dalt.* 351.

For Example: A School-master, Father, Mother, or Master, Correcting a Child, Scholar, or Servant: Moderately Shooting at Bricks, Butts, or lawful Marks: A Work-man casting Tiles, Timber, or Stone from off a House, or any thing from a Cart, and giving warning, or doing other lawful things, giving warning.

But the killing of a Man in doing any unlawful Act without evil Intent, is Felony; as shooting Arrows, casting Stones into Highways where People resort, or unto other Places of usual resort; *Dalt.* 352.

If a Man be slain by the fall of a House or Tree, by a Beast, &c. any Party, by a wilful Default, causing it, it is Felony, *Dalt.* 251.

The thing that causes the Death, is a *Deodand*, and forfeited to the King, *Dalt.* 353. *Crompt.* 35. *a.*

Deodands are not Forfeit, till the matter be found on Record.

If a Man be slain under fourteen Years of Age, nothing is forfeited as a *Deodand*, *Dalt.* 353. *Lamb.* 21, &c.

CHAP. I.

The Office and Duty of a Constable. His Oath. The manner of executing the Warrants of a Justice of the Peace. His Office in Affrays, Arrests, Escapes, Hue and Cry, &c.

Oathes.

YOU *shall Swear that you shall well and truly serve our Sovereign Lady the Queen in the Office of a Constable: You shall see and cause Her Majesty's Peace to be well*

well and truly kept and preserved so far as in your Power lyeth: You shall Arrest all such Persons as in your Sight or presence shall ride or go armed offensively, or shall commit or make any Riot, Affray, or any other Breach of Her Majesty's Peace: You shall do your best Endeavour, upon Complaint to you made, to apprehend all Felons, Barretors, and Rioters, or Persons Riotously assembled, and if any such Offenders shall make resistance with force, you shall levy Hue and Cry and shall pursue them till they be taken: You shall do your best Endeavour that the Watch in and about your Hundred, be duly kept for the apprehending Vagabonds, Rogues, Night walkers Eves droppers, Scouts, and other suspected Persons, and of such as go armed, and the like: And that Hue and Cry be duly raised and pursued, according to the Statute of Winchester, *against Murtherers, Thieves, and other Felons: And that the Statutes made for Rogues, Vagabonds, and such other idle Persons, as come within your Bounds and Limits, be duly put in Execution: You shall have a watchful Eye upon such Persons as shall maintain or keep any Common House or Place where any unlawful Game is, or shall be used, as also to such as shall frequent or use such Places, or shall use or exercise any unlawful Games there or elsewhere, contrary to the Statutes. At your Sessions, Assize, or Leets, you shall present all and every the Offences done contrary to the Statutes of the 1. 4. and 21 of* James *the First, to restrain the inordinate haunting and tipling in Inns, Alehouses, and other Victualling Houses, and for the repressing Drunkenness: You shall there likewise true Presentment make of all Blood-sheddings, Affrays, Outcries, Rescous, and other Offences committed or done against the Queen's Majesty's Peace within your Limits: You shall once every Year, during your Office, present at the Quarter-Sessions all Popish Recusants within your Liberty, and their Children above Nine Years old, and their Servants, (viz. their Monthly Absence from the Church) 3 Jac. 1. chap. 4. You shall well and duly execute all Precepts and Warrants to you directed from the Justices of the Peace of the County, or Superior Officers: You shall be aiding to your Neighbours against unlawful Purveyances: In time of Hay or Corn Harvest, upon request, you shall cause all Persons meet, to serv*

rve by the Day for the Mowing, Reaping, or getting in of rn and Hay: You shall, in Easter-Week, cause your Pa-shoners to chuse your Surveyors for the mending the High-Ways in your Parish or Liberty: And you shall well and uly, according to your Knowledge, Power, and Ability, , and execute all other things belonging to the Office and uty of a Constable, so long as you shall continue in the id Office.

By this Tenour of an Oath, a Constable may gain considerable Light into what he is to do, in the Management and Execution of his Office, being, as it were, n Epitome of what I shall hereafter set down more ntelligibly and plainly to be understood: But this Oath is often administred in Abstract to a Petty Constable, Tything-man, &c. So that what I now re-ite suffices.

The Petty-Constable, &c. his Oath.

YOU shall Swear that you shall well and truly execute the Office of a Tything-man, of the Tything of D. (or Headborough, &c.) *Her Majesty's Peace in your Person, you shall keep, and see it kept in others, as much as in you lyeth; in the Presence of the High Constable, you shall be aiding and assisting to him, and in his Absence you shall execute his Office, according to your Power and Knowledge, till another be chosen in your Place, or you be Legally Discharged. So help you God.*

The High-Constables in their respective Hundreds, are Conservators of the Peace at Common-Law, as are the Petty-Constables in their respective Towns and Liberties, and have a large Power to back and support them in the Execution of their Office, if they proceed within the Bounds of it; for it is so ordered, that if an Action be brought against a Constable, Headborough, &c. or their Assistants, for any thing done by reason of their respective Offices, they may plead the General Issue, and give the special matter in Evidence, 7 *Jac.* 1. chap.

chap. 5. 21 *Jac.* 1. chap. 22. *Wingate's* Abridg. Stat. Tit. Evidence, *&c.* And if it ſo happen, any Action be brought againſt one or more of them, it is ſo provided, that it ſhall be laid in the County where the Fact commenced; and if the Verdict paſs for the Defendant, he is to have double Coſts; and this to be recovered, as other Defendants recover their Coſts, by 7 *Jac.* 1. chap. 5. 21 *Jac.* chap. 12. *Wing.* Abridg. Stat. Tit. Evidence.

For indeed a Conſtable legally choſen, is compelled to ſerve the Office, being a fit Man, able of Body, and of Subſtance; and it would go hard, if, for every trivial Slip, he ſhould run the Riſk of being ruined by Vexatious Suits; for if a Conſtable, *&c.* Legally elected to the Office, do refuſe to ſerve and take the Oath, (unleſs a Quaker, and then, according to the late Statute for taking the Oaths, *&c.* his Affirmation will hold good in lieu of an Oath;) he may be bound over by the Juſtices to the next Seſſions or Aſſizes, and there proſecuted for a Contempt.

Serving Warrants.

If a Warrant be brought to a Conſtable, or other Sworn Officer, his ſafeſt way is to charge the Party making the complaint, to aſſiſt him in the Queen's Name, and ſhew him the Party or Parties mentioned in the Warrant, unleſs himſelf be well acquainted with him, or them, leſt a Miſtake, by the Names agreeing, may run him into an Error, in taking the wrong Party: And if he be a Sworn known Officer, he may refuſe to ſhew his Warrant; but muſt declare to the Party he goes to Arreſt, what is therein charged againſt him: But it is otherwiſe where a Warrant is given to be ſerved by one who is not a known Sworn Officer? as a Juſtices Servant, *&c.* for there, upon demand, he muſt produce the Warrant or the Party of whom it is ſerved, may refuſe to obey, and lawfully Reſiſt.

If a Conſtable Arreſt a Man or Woman in the Queen's Name, pretending he has a Warrant, and

that

hat time he has none, but presently goes and gets ne, that Party may bring an Action of false Imprionment against him, and recover some Damage with Cost, as shall be Awarded, *Coke 6. 68.*

If a Constable have a Warrant against *A. B.* the on of *L. B.* and he takes into his Custody *A. B.* the on of *R. B.* though he happen to be the Offender gainst whom the Complaint was made, yet he goes om his Warrant, and doing thereby an unjustifiable ction, there lies an Action of false Imprisonment gainst him, 10 *E.* 4. Fol. 12.

If a Constable Arrests a Man with a Warrant from Justice of the Peace, and having him in Custody, kes his Word to come again another time; by his o dismissing him, the Warrant is void, and cannot e served again. But if a Rescue be made, or the Prioner escapes without the Officers consent, then upon resh pursuit he may take him with the same Warrant s often as he is rescued or escapes, and may pursue im into another Town or County, though he be out of Sight, *Crompt.* 214. *a.* and 184. *Cro.* 53. 114.

If a Justice send a Warrant for a matter wherein he hath Jurisdiction, though he goes beyond his Authority, yet the Officer is bound to obey it, and his producing his Warrant saves him harmless, the Justice being then to answer for it: But on the contrary, if a Justice Issues out a Warrant for a matter out of his Jurisdiction, where he is to Judge of the Cause, the Constable is not bound to obey it; for he is bound to take Notice of the Jurisdiction and Authority of the Judge; and where the Justice, as is said, can be no Judge of the matter charged in the Warrant, he is no more bound to obey him, than if he had no Commission, 14 *H.* 8. *Co.* 10. 76.

If a Warrant be directed to an Officer, to serve on a Person for ordinary matters, the Warrant not specifying the Cause, but only to answer to all such matters as shall be objected against him or her; this is held to be an illegal Warrant, and the Officer that executes it, lies liable to an Action of false Imprisonment,

ment, *Coke's Institutes, Part. 4. Tit. de Frangent. Pris.* However for Reason of State-Warrants for Treason or such as are granted by the Lords of the Privy Council, Secretaries of State, or the Lord Chief Justice of *England*; these need not set forth the Cause, by reason they are usually granted on matters of great Importance, where Secrecy is required.

If any Party be taken by a Legal Warrant and make Resistance, the Constable in the Queen's Name may command Assistance; and if the Resisting Party be beaten or wounded, the amends is in his own Hand, for opposing the Queen's Authority; but if the Constable, or any of his Assistants, be beaten or wounded, the Party is Indictable, as likewise liable to an Action at Common-Law; and if any of them die of the Beating and Wounds within twelve Months, it is Murther.

Persons refusing to assist a known Sworn Officer, charging them in the Queen's Name, lyes liable to be bound over to the Sessions, and Fined at the Discretion of the Justices; and the like for those that shall contemn or abuse a Justices Warrant, by tearing, treading under Foot, or any way defacing of it, *&c.* over and above being bound to the good Behaviour; for it is a Contempt against the Queen's Process, *Crompt.* 144

Affrays.

If a Constable be present at an Affray, he may command the Standers by, in the Queen's Name, to assist him in keeping the Peace, and upon Complaint of the Constable, the Inquest may Indict the Party refusing, and be Fined by the Justices at their Sessions for refusing to do his Duty.

If a Constable, or other such like Officer, be present when one Man or Woman Assaults another, or with violent Words threatens to beat or kill any one, and be in a Fury, ready to break the Peace. In such case the Constable, Headborough, *&c.* may commit the Offenders to the Stocks, or some other safe Place of Custody, till he can carry them before a Justice, who may

may, upon Complaint, compel them to find Sureties for the Peace, or good Behaviour; and for want of such Sureties, commit them to Prison, 3 *Hen.* 4, 9 & 10. *Bacon*'s Element of the Law, *&c.*

Where any Affray is like to be, the Constable in the Queen's Name may command them to depart on pain of Imprisonment and if they refuse, he may take them into Custody; or Indict such as refuse, if any harm be done, at the next Sessions: And if a Constable be present at an Affray, and does not his Endeavour to prevent it, and seize the Offenders, he lies liable, upon a Presentment of the Jury, to be Fined, *Dalton*'s Justice of the Peace, *c.* 1. *fol.* 45.

A Constable may resist the Affrayers after Proclamation made to depart, and compel them to it by force; and if he, or any of his Assistants, be wounded, they have their Remedy by Statute and Common-Law, and if Killed, or Dying of their Wounds, it is Murther in the Affrayers, *Lamb.* 135. 1 *Hen.* 7. 7. 3 *H.* 7. 10.

If the Affrayers be in a House, the Doors locked or bolted, the Constable may break them open to part the Affray, and keep the Peace, though none have taken hurt; and if they fly into another House, the Constable, upon fresh pursuit, may break into that House to apprehend them, and so till they shall be taken, *Lamb.* 125. 7 *Edw.* 3. 19.

If any be dangerously hurt in an Affray, though the Constable be not present at the Affray, yet may he seize the Offenders, and carry them before a Justice of the Peace, who is to require Sureties of them, or the Wounds being supposed Mortal, to commit them to Prison, till it be certified by Chyrurgeons or Physicians, whether the Party will live or die, *Dalt. Just. P.* c. 8. fol. 33.

After the Affray is over, the Constable not being present at it, cannot seize them without Warrant, unless some one be dangerously Wounded, and much Blood drawn. If Affrayers escape into another County, or Franchise, a Constable, upon fresh pursuit, may seize them there, and carry them before a Justice of the

the Peace of the ſame County, to find Sureties for the Peace; but then he muſt ſee the Affray.

All Conteſts are not properly Affrays; for to make it ſuch, there muſt be ſome Blows given, or offered to be given; for haſty Words will not Warrant an Affray, unleſs they threaten to Beat, Kill, or Wound one another; and in ſuch caſe a Conſtable may apprehend the Offenders, and carry them before a Juſtice, to find Surety for the Peace; and yet ſuch threatning Words are not properly taken for an Affray, *Dalt. Juſt. P.* c. 8. fol. 34. 38 *Hen.* 8.

Arreſts and Eſcapes.

Upon a Conſtable, or any Sworn Officer of the Peace, having Arreſted a Felon, or taken any Perſon into Cuſtody on Suſpicion thereof, and he is conniving at his Eſcape, or giveth him leave to go out of his Cuſtody at Liberty, ſo that he does eſcape, it is no Felony in the Priſoner, but it lies upon the Conſtable, and he muſt anſwer for it; but if the Priſoner accidentally eſcape, without the Conſtable's conſent, he is then Guilty of the Felony, and the Conſtable Finable for his Negligence.

If a Conſtable, by his Negligence, let a Priſoner, in his Cuſtody, have opportunity to make away with himſelf, by Stabbing, Drowning, or any violent Death, he is Fineable, *Dalton's Juſtice of the Peace*, c. 16. fol. 272.

Where a Felony is committed, and one is taken by a Conſtable, on Suſpicion of committing it, though afterward the Conſtable be very well ſatisfied he is innocent, yet may not he diſcharge him without carrying him before a Juſtice of the Peace; for being once taken into the Cuſtody, he muſt be delivered by due courſe of Law: Nor may a Conſtable ſuffer the Compounding any Felony; for if it be done after he Arreſts the Party, or before, he is to declare his Knowledge of ſuch Compounding before the Juſtice, or for conniving to extenuate the Fact, and ſet the Priſoner

Prisoner at Liberty, he is Fineable; and some hold he may be brought in as an Accessary.

A Constable may use all lawful Means to secure his Prisoner, as setting him in the Stocks, or putting Irons on him, if he be unruly, till he can carry him before a Justice; or Pinion his Hands behind him with Cords, to prevent his escape in carrying him thither, or Prison.

If the Gaoler will not receive a Prisoner of a Constable, where he is lawfully committed, he must not, however, let him go, but bring him back to the Town or Village where he was taken, or where the Constable dwells, and the Town where he was taken, shall be at the charge of keeping him until the next Gaol-delivery, to be raised by way of Tax amongst the Inhabitants, if the Prisoner has no Money or Goods to defray it; and in such case the Gaoler shall be punished by the Justices in their Sessions or Assize, for his Refusal and Contempt. If there be much Charge in carrying a Prisoner to Goal, the Inhabitants where he was taken, may be obliged to contribute to it, to be Levied by such of the principal Inhabitants as shall be thereunto appointed at their Discretion.

Hue and Cry.

When a Hue and Cry is Levied and Issued out, whether for Robbery, Murther, &c. when it comes to the Hands of a Constable, Headborough, Tithingman, &c. They must forthwith make diligent Search in all suspected Houses, Barns, and Out-houses, and other Houses, at their Discretion, and all Places within their Liberty or Precincts, and have Power to stop any suspected Persons as in Search or Pursuit they shall find, or suspect to have done the Fact, comparing him or her, or their Horses, with the Description given in their Hue and Cry, and if cause be found to carry the Party before the next Justice of the Peace in the Coun-

ty where taken, there to be ſtrictly Examined, where he or they were at that time of the Fact committed; and for the neglect of this Duty, the Officer lyes liable to be Fined by the Juſtices in Seſſions, and ſearch being diligently made, muſt without delay ſend to the next Conſtable or Officer of the Peace, unleſs the Party or Parties be taken who are known to have committed the Fact mentioned therein, *Dalt.* Juſt. *P.* ch. 28. fol. 75.

Where a Robbery is committed in a Hundred, and the Hundred is ſued for it, though the Damages are recovered againſt one or two of the ſaid Hundred, yet they are not to bear the Charge, but the reſt muſt proportionably contribute according to their Ability; and two Juſtices of the Peace, one to be of the *Quorum*, dwelling in or near the ſaid Hundred, may ſet a Tax on every Pariſh within it, and then it is the Duty of the Conſtable or Tithingman of each Pariſh to ſettle the Groſs Tax proportionably on the Inhabitants in particular, and may upon refuſal of Payment make Diſtreſs and Sale of Goods, delivering the Overplus on due Appraiſement to the Owner; and the Money ſo collected is to be put into the Hands of the Juſtices, or ſome of them that made the Rate, within ten Days after, according to 27 *Eliz.* ch. 13. *&c.*

If freſh purſuit on the Hue and Cry ſhall ceaſe in any Hundred, it is liable to pay half the Damages to the Hundred wherein the Robbery was committed, to be recovered by Action in any of Her Majeſty's Courts at *Weſtminſter*, at the Suit of the Clerk of the Peace for the County; and though in the mean time he die or be chan;ed, the Suit ſhall not fall or abate; and when ſo recovered, it is to be levied on the Inhabitants by way of Tax as the former, 27 *Eliz.* ch. 13.

If any one of the Robbers be apprehended and brought to Juſtice, and Convicted, it ſaves the Hundred their Money, becauſe it is looked on they have regard to watching the Roads for the ſecure Travelling of Paſſengers. Alſo when the Action is not brought within one Year after the Robbery committed.

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The Robbery must be committed in the Queen's High-way, between Sun-rise and Sun-set, and Oath made of it, with the Sum lost, before the next Justice of the Peace, with all convenient speed. The Hue and Cry thereupon issued out, must be made with Horse and Foot, or else it is held illegal, *Bract.* Book 3. fol. 121. *Dalt. Just. P.* fol. 133.

Whoso goes not Armed and fitly prepared at the Command of the Sheriff or Constable, when the Hue and Cry is issued out, (to Arrest the Robbers or Felons) after attainder may be severely Fined and Imprisoned, *Westm.* 2. ch. 9. *Cook*'s second Part of Institutes, fol. 172.

Conservation of the Peace.

Though a Constable may do his Endeavour to keep the Peace, yet if it be broken, he cannot take Surety for it at the Request of any one, *H.* 7. fol. 18.

Before a Warrant of the Peace be served, the Constable, or other Officer, ought to acquaint the Party with it, and charge him in the Queen's Name, to go along with him, to put in Sureties if required; and if he refuse so to do, then to compel him to do it; and if it be in an unseasonable time, that the Justices be in Bed, or not to be found, he may secure him under a Guard, or in Prison, if he will be so rigorous, till he can convey him before a Justice, and is not bound to run up and down from Place to Place with him, nor lose his time, in staying till the Prisoner can send for Sureties, but may immediately carry him before what Justice he pleases, and not submit it to the Prisoner's Election, nor to that of the Party that make the Complaint, unless the Warrant be special, of which particular I shall speak more fully in another Place.

If a Constable have a Warrant of the Peace against a Person to find Sureties, where the matter is palpable the Party having Notice of it, may supersede it, by putting in Surety before another Justice, to answer the Complaint the next Sessions, and then if that Justice, being of the same County, send a Supersedeas to the

Officer to discharge farther Surety, and he notwithstanding Arrest the Party to find Surety, or Imprison him, he may bring his Action of false Imprisonment against the said Constable, or for the like contempt of the Officer upon a Supersedeas out of Chancery, or the King's-Bench, for a Supersedeas is a discharge of the former Warrant, *Dalt.* Just. P. ch. 69. fol. 159.

Upon Notice given to a Constable, or other Peace-Officer, or if it be upon his or their own Knowledge, that a Man or Woman Adulterously cohabit together, or live in Fornication, being of Evil Report, he may search any suspected House for them wherein he is informed, or knows they are in the Night-time; and there apprehend them and carry them before a Magistrate to find Sureties for their good Behaviour, 13 H. 7. 20. *Dalt.* Just. P. ch. 75. fol. 189.

If any one abuse or affront a Constable in the Execution of his Office, either by Word or Action, he may have him bound over to the good Behaviour for such his Offence, and Fined before the Justice in their Sessions, as they see fit upon Proof, *&c. Fitz.* 207. *Crompt.* 135.

All injurious Force and Violence used against the Person, Lands, Goods, or other Possessions or Chattels of a Man or Woman, is held a breach of the Peace, whether it be by threatning Words, furious Gestures, or bodily Force, *Dalt.* ch. 3. fol. 9.

Note, Upon any Disputes in an Ale-house or Tavern, *&c.* about paying the Reckoning, and the Parties offer to make their Escapes without paying, if there be no Swords drawn, Beating, Wounding, or visible Breach of the Peace, the Constable is not bound to go though sent for, nor is it Warrantable for him to Arrest and carry before a Justice, unless a Warrant be put into his Hand; for this is only a Debt, and the Party aggrieved must bring his Action, for the Credit he gave for the Victuals or Drink, *&c.* being freely delivered by his Consent, and those Constables that way, may bring themselves into Trouble, and only be laughed at by those that set them on Work, and counted their Stalking-horses.

No Warrant, Writ or Proceſs ſhall be ſerved on the Lord's-Day commonly called Sunday, except for Felony, Treaſon, or the Breach of the Peace; for otherways the Service ſhall be void, and the Juſtices may diſcharge the Warrant without examining the Parties, and the Party ſerving it ſhall be obliged to anſwer Damages, as if no Warrant had been to the Party who is Arreſted, and detained by ſuch a Warrant on the Lord's-Day, *26 Car.* 2. ch. 7.

CHAP. II.

The Conſtables Duty in Relation to the LORD's Day, Riots, Ale-houſes, Inns, Weights, Meaſures, Watches, &c.

Lord's-Day.

WHoever on the Lord's-Day is preſent at, or keeps any Shooting, Wreſtling, Ringing of Bells for Pleaſure, Bowling, Church-Ales, Wakes, Masks, or any Games, Sports, or Paſtimes whatſoever, he ſhall forfeit 5 Shillings, if above the Age of 14, if under that Age 1 Shilling, to be paid by him or her that has the Government of the Party, to be levied by the Conſtable on Sale of Goods taken in Diſtreſs, by Warrant from a Juſtice of Peace, or Chief Magiſtrate, and for want of ſuch Diſtreſs the Offender to be ſet in the Stocks for the ſpace of 3 Hours: And any Carrier going by way of Travelling with his Horſe on this Day, or any Carrier, Waggoner, or Waynman going with any Cart, Waggon, Wayn, or Drover with Cattel, forfeits 20 Shillings for every ſuch Offence, to be levied by Diſtreſs, and Sale of his or their Goods, if charged, and duly convicted within 6 VVeeks after the Offence committed, as in the Caſe of Butchers, and the Money ſhall be had to the uſe of the Pariſh where the

Diſtreſs is firſt made; for though they paſs through ſeveral Pariſhes, yet are they to pay but 20 Shillings for one Journey, 3 *Car.* 1. ch. 1. *Dalt.* ch. 50. fol. 134.

Dreſſing Meat in Inns, Cooks-Shops, and private Families, are not prohibited on the Lord's-Day, by the Statute of 29 *Car.* 2. And for the better Encouragement of the Mackrel Fiſhery, they are in the Seaſon to be ſold this Day, but before and after Sermon time only.

If any Bull-baiting, Bear-baiting, Enterludes, or other unlawful Games and Paſtimes of the like Nature, be held in the Pariſh or out of the Pariſh on the Lord's-Day, upon Warrant to him directed, the Conſtable, *&c.* may levy 3 Shillings 8 Pence by Diſtreſs and Sale of the Offenders Goods, rendring the Overplus to the Owner, if any be; or ſet the Party, for want of ſuch Diſtreſs, in the Stocks by the ſpace of 3 Hours, but then the Party offending muſt be queſtioned within the ſpace of a Month after the Offence committed, 1 *Car.* 1. ch. 1 *Dalt.* Juſt. P. ch. 23. fol. 6.

None ſhall do any Work, by Labour or Buſineſs, on the Lord's-Day, Works of Neceſſity and Charity only accepted, but that the Offender, if above the Age of 14 Years or upwards, ſhall forfeit 5 Shillings. None ſhall cry and expoſe to ſale any Wares that Day, on pain to forfeit them, except Milk, and that before 9 in the Morning, and after 4 in the Afternoon. No Drover, Higler, Horſe-courſer, Butcher, or their Servants, ſhall Travel on the Lord's-Day, upon pain of forfeiting 20 Shillings. No Perſon ſhall Travel on this Day on Horſeback, or with Boat, or Wherry, unleſs on extraordinary Occaſions, to be allowed by a Juſtice of the Peace, or Head Officer of the Place, under Penalty of forfeiting 5 Shillings. No Hackney-Coaches to Travel that Day, unleſs ſuch as are allowed by an Act of His late Majeſty King *William* III. *&c.* for Licenſing Hackney-Coaches, *&c.* 29. *Car.* 2. ch. 7. And Penalties upon this Act are for the uſe of the Poor of the Pariſh where they are levied, or the Offence committed, ſaving the Juſtice, or other Head-Officer;

Officer, may reward the Informer if he think fit, with a third Part. And farther Note, That the Profecution of this Act, muſt be made within 10 Days after the Fact committed.

If any Butcher Kill and Sell any Victuals on the Lord's-Day, or any one do it for him, the Conſtable, by Diſtreſs and Sale of his Goods, may levy 6 Shillings 8 Pence upon Warrant from a Juſtice, *&c.* But the Complaint or Information muſt be made within 6 Weeks, and the Party thereof Convicted before a Juſtice of Peace, Mayor, or Chief Officer, upon their own View, proof of two Witneſſes, or the Parties own Confeſſion; and they may, at their Diſcretion, gratify the Informer with the third Part of the Penalty, 3 *Car.* 1. ch. 1. *Dalton's* Juſt. *P.* ch. 50. fol. 134.

Riots.

The Power of a Conſtable, in Diſorders of this Kind, is very great, and it is his Buſineſs to be diligent in Suppreſſing them; as alſo that of the Sheriffs, and others of the Queen's Officers, by reaſon ſuch Tumults are of dangerous Conſequence to the Government, and many times, as it has been known, from ſmall beginnings, broke into open Rebellions, and diſturbed the Peace of the whole Kingdom; and therefore.

Note, Where three or more Perſons ſhall Meet and Aſſemble themſelves together, to the intent to do any unlawful Act with Violence or Force, againſt the Perſon of another, his Poſſeſſions or Goods; as to beat, kill, or otherwiſe to hurt, or, without Authority, to Impriſon a Man in his own Houſe, or elſewhere. To pull down a Wall, Pale, Houſe, Hedge, Ditch, or wrongfully to enter upon, or into the Poſſeſſion of another Man's Houſe or Land, *&c.* Or without Right to cut or take away Wood, Corn, Graſs, or other Goods, or unlawfully to hunt in any Warren, or Park, or with Force or Violence do any other unlawful Act, againſt the Queen's Peace, to the manifeſt Terror of the People. And if they only meet to ſuch intent or

purpose, though they afterwards depart of their own accord, without putting their Intentions in Execution; it is nevertheless an unlawful Assembly, by reason their first Intention which occasioned them so to Assemble, was with an evil Design, *Bro. Tit. Riots* 4, 5. *Co.* 3. *Part. Institutes*, fol. 176. *Dalt.* Just. *P.* ch. 85. fol. 217. *Stat.* 27. *Rich.* 2. ch. 8.

Ale-Houses and Inns.

He that, without a License, shall presume to keep an Ale-House, selling Ale or Beer, forfeits 20 *s.* to be levied by Distress and Sale of Goods, and converted to the use of the Poor of the Parish, and this to be done by the Constable and Church-wardens by Warrant, from a Justice of the Peace of the same County, and upon Distress and Sale, the Overplus to be returned to the Owner of the Goods if any such remain, and a Constable, *&c.* refusing, or neglecting to execute any such Warrant to him directed, forfeits 20 *s.* upon failure of Goods, to levy the Distress upon such Ale-house keeper; the Constable being impowered by the Warrant aforesaid, may openly whip or cause the Offender to be whipped in his presence; the Goods upon Distress, are to be sold in three Days; the Offence to be proved before the Justice of the Peace who grants the Warrant; and the Justice, upon Default of the Constable, in executing his Office relating to the Premises, may commit him to Gaol till he causes the Offender to be whipped, or pay the Forty Shillings to the use of the Poor, 3 *Car.* 2. c. 3. *Dalt. Just. P.* c. 7. Fol. 31, 32.

If a Warrant be directed from a Justice of the Peace, to a Constable and Church-wardens, against an Inn-keeper, Ale-house-keeper, or Victualler, for suffering Excessive Drinking, or Tippling in his House, as any Townsman, or others, so Tippling, or being Drunk, and he neglects to do his Duty, he forfeits 10 *s.* to be levied by Distress and Sale of Goods, to the use of the Poor of the Parish: Any Person, for Excessive Tippling,

pling, is to pay 3 *s.* 4 *d.* or to ſit in the Stocks four Hours; for being Drunk 5 *s.* or to ſit in the Stocks ſix Hours if the Money be not paid, or there be no Goods belonging to the Offender, whereon Diſtreſs is to be made, and the Inn-keeper, Ale-houſe-keeper or Victualler, for ſuffering ſuch Offences in his Houſe, upon due proof, forfeits 10 *s.* and the Diſtreſs made, muſt be ſold in ſix Days, if the Money of the Diſtreſs be not in the mean while paid; and if ſuch Ale-houſe-keeper, Victualler, *&c.* refuſes to ſell a full Ale Quart of the beſt Ale or Beer for one Penny, or two Quarts of ſmall Beer for a Penny, or ſelling leſs than ſuch Meaſure, the Party ſo offending forfeits 20 *s.* for every Offence, to be levied as aforeſaid: And if, in theſe particulars, no Diſtreſs be found, or if the Officer neglects, within twenty Days, to certifie the Default to the Juſtices, the Officer forfeits 40. *s.* to be levied by Diſtreſs and Sale of Goods to the uſe of the Poor, by Warrant to be directed to any indifferent Perſon, under the Hands and Seals of one or two Juſtices of the Peace; and for Default of ſuch Diſtreſs, the Juſtice may ſend the Offenders to Priſon, there to remain till the Forfeitures are paid, purſuant to the Statute, 1. *Jac.* chap. 9. 1 *Car.* 1. chap. 4. and ſome other Statutes relating to theſe Forfeitures and Penalties in Particulars and Generals; but Offences of this Nature are to be enquired into, within ſix Months after they are committed, and the Conſtable, and other Pariſh Officers, may be charged upon Oath, to make a due Preſentment of them.

As for Ale-meaſure, here is meant *Winchester*-meaſure, the Statute not being repealed, by reaſon of Exciſe and Dearneſs of Hops and Malt, to what it was in former times, the Price of Drink is raiſed by the Brewers, that a *Winchester*-Quart of ſtrong Beer or Ale ſtands the Victualler in more than a Penny, yet let them beware of raiſing it to an extorting Price, leſt this Statute may be made uſe of to keep their Conſciences within Bounds of Moderation.

If any Ale-houſe-keeper refuſe to lodge a wayfaring

Person or Traveller, he or she offering Money for the Victuals and Drink, &c. in present Pay, the Constable, upon such Refusal, may cause such Ale-house-keeper, or Inn-keeper, to be Indicted at the Sessions or Assizes, where he may be Fined or Imprisoned, or the Party so refused, may bring his Action on the case; but then ready Money must have been offered before-hand, if required, *Coke 9. Rep.* Fol. 87. *b.* 10 *Hen.* 7. 8. *Dalton's Just.* P. chap. 7. Fol. 28. They lye liable to Penalties also for keeping any Gaming in their Houses or Backsides. And indeed the Laws are very strict in these Cases, to prevent Mischief and Inconveniency.

Weights and Measures.

In the Market-Towns, Cities and Boroughs, there ought to be common sealed Weights and Measures, at which the Inhabitants may be freely allowed to weigh, and all Foreigners must pay for every Draught under 40 *l.* one Farthing, and for a Draught between 40 and 100, a Half-penny, and for a Draught between 100 and 1000, a Penny, which Money is to go towards the maintaining the Weights, and the Person that attends the Service; or the Officers that attend the Service may have their Reward at the Discretion of the Inhabitants, 8 *Hen.* 6. chap. 5.

And if in a City such common Weights and Measures are wanting, it forfeits to the King 10 *l.* every Borough 5 *l.* and every Town where publick Market is held 40 *s.* and the chief Officers of such Places, are, upon the Request of the Inhabitants, &c. to them made, to Seal and Mark such Weights and Measures for any of the Queen's Subjects, taking for Sealing and Marking, as the Statute in that case directs, and none ought to Weigh or Measure with any other than what are Sealed and Marked, 8 *Hen.* 6. c. 5. 11 *Hen.* 7. c. 4.

And for the more regular and due observing of this, that no Frauds in this kind may be, the Mayors and chief Officers in Cities, Boroughs, &c. once every Year at the least, are to view all Measures and Weights within

within their Jurisdiction, and to burn and break such as are not Sealed, or less than Measure or Weight, according to the King's Standard; also to Amerce the Offender, *viz.* for the first Offence 6 *s.* 8 *d.* for the second Offence 13 *s.* 4 *d.* and for the third Offence 20 *s.* and over and above the Offender may be adjudged to be set in the Pillory, 11 *Hen.* 7. c. 4.

Watches.

For the better Security, and quiet Repose of the Inhabitants in every Town, Village, Parish, and Tything, a Watch every Night from *Ascension-day* till *Michaelmas*, ought to be kept from Sun-set, to Sun-rising, which the Constables and other Officers there appointed, must cause to be set by two, four, or more able Men, according to the largeness of the Place, 13 *Edw.* 1. c. 4. *Poulton Tit.* Watch. 1. *Dalt.* 60. Fol. 140.

The Watches thus lawfully set by Authority, have Power to examine such Persons as pass by them in the Night, being Strangers or others, and finding a reasonable ground for cause of Suspicion, they may secure them till the Morning; and such as refuse to obey, they may levy Hue and Cry in pursuit of them: And where they refuse, if the Watch-men beat them, it is justifiable: And to secure them, they may put them into the Stocks, or Cage, till the Morning; and then if they give a good Account of themselves, or that no farther Suspicion appear, but that they may be honest People, they may let them go; but if otherwise, then they are to deliver them to the Constable, who is to convey them before a Justice to be examined, who may commit them, bind them over, or utterly discharge them, according as he finds cause.

The Watch in this case is to apprehend such as Ride, or go Armed, Scouts, Eves-droppers, Noctivagrants, Night-walkers, and all sorts of Rogues and Vagabonds, *&c.* 1 *Dalt.* c. 60. Fol. 140. 5 *Hen.* 7. 5. 5 *Edw.* 3. 14.

The Watch so set by Authority, must be Men Healthy,

Healthy, and of able Bodies, and do their Duty, ſufficiently Armed; and no Perſon, not being an Inhabitant within the Town or Pariſh where the Watch is kept, can be compelled to Watch.

The Inhabitants are to take their Watching in turns, as it comes to them by the Number of Houſes, as the Cuſtom of the Place has been, and may not be compelled out of order by the Conſtable to do it.

If any Inhabitant be lawfully Warned in his Turn, by the Conſtable, to Watch, and refuſes it, he may preſent him at the next Seſſions or Aſſize, or to make his Complaint to a Juſtice of Peace, who has Power to bind him over to his good Behaviour, and ſo continue him to the next Aſſize, or Seſſions, to anſwer the Contempt. And this is the ſureſt way, though *Dalton* holds, the Conſtable, *Ex Officio*, may ſet him in the Stocks for ſuch Contempt.

If a Conſtable, or any private Perſon, do make a Refuſal to attend on a Juſtice of the Peace, being ſo Requeſted to do, in order to remove a Force, or convey any Party to the Gaol for ſuch a Neglect of his Duty, he may be Impriſoned, and over and above Fined to the King, 15 *Rich.* 2. c. 2. *Dalt. Juſt.* P. c. 22 Fol. 57.

CHAP. III.

The Conſtable's Duty relating to Swearing and Curſing, Vagabonds and Beggars. With a Concluſive Diſcourſe directing High-Conſtables, and Petty-Conſtables, what to Return before the Juſtices in Seſſions.

Swearing and Curſing.

BY a late Statute made in the 6th and 7th Year of the Reign of *William* the Third, *Chap.* 1. it is Enacted,

Enacted, for the restraining that Dangerous and Unprofitable Sin of Swearing and Cursing, that such, as in the presence or hearing of a Justice of the Peace of the same County wherein the Offence is committed, or Head Officer, or Justice of the Peace of the City, do Swear or Curse, or are thereof convicted by Witness, or Confession of the Party, before any Magistrate, the Offender, if a common Soldier, Labourer, or Servant, shall pay for every Oath, *&c.* 18 *d.* for the Use of the Poor of the Parish wherein the Offence is committed, and every other Person is to pay 2 *s.* for the like Offence; for the second double, for the third treble, to be levied by Distress, by Warrant from one Justice of the Peace; and where no Distress is found, the Offender, if above Sixteen Years of Age, is to be set in the Stocks the space of one Hour, for one Offence, and two Hours or more for two Offences; but if under Age, to be whip'd by the Parents, or Master, in the presence of the Constable, *&c.* who neglecting to put this Act in Execution, being knowing of the Offence, to forfeit 5 Pounds; and none are to be prosecuted upon this Act, beyond the Expiration of ten Days; therefore Information must be given within the said ten Days after the Offence committed. And for the better deterring Offenders to commit Offences of this kind, it is ordained to mind them of the Danger and Shame they are like to incur thereby, that this Act be publickly read in Churches next Sunday after every Quarter-day, immediately after Morning-Prayer, under Penalty of 20 *s.* for each Omission, and Justices, *&c.* are to keep a Register of all such Convictions before them, and to certifie the same at the Quarter-Sessions, to be there recorded, where any one may search for the same, and see it without paying any manner of Fees.

Vagabonds and Beggars.

By an Act of the 11th and 12th of *William* III. it is Enacted, that after the 24th of *June* 1700. if any Vagabond,

Sir-Names, additional Names and Qualities of all Popish Recusants, as well Lodgers as Houlholders, residing or dwelling in any of their respective Parishes or Divisions.

7. The Names of such Persons as divide their Houses into Tenements, and take in Lodgers, or Inmates, that annoy their Neighbours, or are likely to be a charge in the Parish.

8. Such Persons Names as suffer any unlawful Games to be used in their Houses, Gardens, or Backside, with the Names of such as haunt Gaming.

9. They are to present Bakers putting Bread not due Weight to Sale; and all Annoyances as Nusances.

10. They are to present all Masterless Men and Women, as Idle Persons, *&c.* who can give no account how they get their Living; likewise all Whores, Night-walkers, *&c.*

11. They ought to present Scavengers negligent in their Duty.

CHAP. I.

The Office and Duty of a Church-warden, Questman, Sides-man, in each Particular Duty belonging to the Parish.

Lord's-Day.

THEY are strictly to see the Lord's-Day kept in, and and out of the Church, and to visit Inns, Taverns and Ale houses; and if in the time of Divine Service they find any Persons Tipling there, they may carry them before a Justice of Peace, who may cause them to pay 3 s, 4 d. for Tipling, over and above the 12 d. due for being absent from the Church; and he that keeps the House, for so suffering them to Tipple; forfeits 10 s. and these Sums to go to the use of the Poor of the Parish, 4 Jac. ch. 5.

The Minister and Church wardens are not to suffer any Person to Preach within the Church nor Chappel, not producing

a Licenſe to authorize him ſo legally to Preach, and ſuch an one as to them ſhall appear ſufficient, Can. 50. 85. *No Sports are to be ſuffered in the Church, Chappel, Church or Chappel-yard, on a Sunday or other Days, or any thing unſeaſonable or tending to the prophaning thoſe places, nor the Bells to be rung for Sport and Paſtime, but to be rung only upon ſuitable and ſolemn Occaſions.*

The Church-wardens, as I hinted being in the Nature of a Corporation, have power to take Gifts for the purchaſing Furniture to the Church, or for other Advantages to the Behoof of the Pariſh; but they may not take an Eſtate of Land by the name of Church-wardens only; for if there be a Feoffment made to the Church-wardens of the Pariſh, the uſe is void in it ſelf; for they are not in a capacity to take ſuch a Purchaſe, nor may they ſubſcribe to have Lands to themſelves or their Succeſſors; for as to Lands they are no Corporation, but to Goods only.

Bells and Pews.

If a Bell be broke, or any ways ſpoiled, ſo that it is not Tunable, the Church-wardens by the Agreement of the Pariſhoners, or the greater part of them, may cauſe it to be new caſt, leaving it in the Founder's hands till he is paid, and by that means the Church-wardens may bar their Succeſſors of that Account.

If any indifferent Perſon, or other in Place, buy a Bell, ſet up a Pew, or any Ornament to the Church, it cannot be taken away by him or his Heirs, &c. Becauſe it is a Dedication, and the Church-wardens may ſue thoſe that attempt it; but the Action muſt be commenced for Goods for the uſe of the Pariſh, and not the Church-wardens own Name; nor can any Church-wardens ſell, impair or releaſe any of the Goods of the Church, without the free conſent of the Sideſmen or Veſtry, under pain of being brought to account for it, by the Succeeding Church-wardens, and forced to make ſufficient ſatisfaction.

If the Church windows or Walls be broke, the Tres cut down in the Church-yard, or the Graſs eaten up there, this lyes in the Parſon's care to redreſs, and not the Church-wardens, for he is Conſervator of the Church and Church-yard, as the Church-wardens are of the moveable Goods only.

The

The Church-wardens have the care of repairing the Pews in the Body of the Church, &c. and other Seats; but it is held in most cases they have not the disposing of them in the Body of the Church, the disposal belonging to the Ordinary of the Place, to place and displace whom he pleases, though in this there are excepted and exempted cases; for suppose a Man and his Ancestors, and all those whose Estates he hath in his Possession in certain Messuages, have time out of Mind continued to repair an Isle or Pew, or sit there, this alters the case, and the Ordinary cannot meddle nor displace; for if he do, a Prohibition lyes; for by Prescription, he hath and enjoys it for a reasonable Consideration: But if there be no care taken to repair such a Pew by the Party claiming by Prescription, and it run to ruin, the Ordinary may take it into his Hands; yet he hath nothing to do in this case in exempted Chappels belonging to Noble-Men.

The Church-wardens, besides the looking after the Books, and other Necessaries and Ornaments of the Church, to see them kept in good Order, are to provide Bread and Wine for the Sacrament, proportionable to the number of the Communicants, and a Parish Rate may be made for supplying this, and other Necessaries. The Church-wardens and Quest-men are likewise to see that in every meeting of the Congregation, the Peace, and a due Decorum *be kept. Also to put out of the Church such as are Excommunicated.*

Parish Rates.

In case of making a Rate for the defraying of Charges, it must be done by the Church wardens, with the consent and assent of the Major part of the Parishioners, House-keepers, of which they are to have convenient Notice before such time appointed, for the said Meeting, to fix and settle such Rates; Now if upon the setting upon these Rates, a Man dwell in one Parish, and have Land in another which he Occupies there, he lies chargeable for his Lands so Occupied in the Parish where his Land lyes; but if he lease out the Land he hath in another Parish reserving Rent, then is he not to be charged for his Lands there, because there is a Parishioner and Inhabitant liable to be charged elsewhere. Co. 5. *Report,* fol. 57.

No

No Person keeping a Stall in a Market, and not being an Inhabitant of the Parish where that Market is kept, can be rated toward the Reparation of the Church; but if a Citizen build a House in an Out-parish, and partly live there, and partly in the City, not having any Land to lease out or occupy in the Parish where his Country House stands, he is however as an Inhabitant liable to the Church Rate, and no Prohibition lyes in this case in the Court Christian, because the Jurisdiction of the thing is not in their Power, though it be rated more than they that have 50 or 100 Acres of Land in that Parish.

If there be in a Parish Chappel of Ease, and one part of the Parish time out of mind is want to repair it, bear Service, and have a custom to Marry in it, and all other Rites, except burying their Dead in the Parish Church, they are however liable to be rated for repairing the Mother Church, Mich. 13. Jac. (1) C. B.

Where only part of the Parishioners are rated, and for defect of Payment, sued in the Ecclesiastical Court, the matter must be pleaded in this Court, for in this case a Prohibition will not lye; and if the Majority of the Parishoners agree to encrease the number of Bells or Ornaments of the Church, it is binding to the rest, and they are liable to the Rates that shall be made, though not consenting to it; and for any Ornaments for the Church, they ought to be rated only for their personal Estates, and not for Land, &c.

And, among other things, it is Enacted, relating to the City of London, *That, where any Church-yard or Church be fronting or adjoyning to any of the Streets, Lanes, or Passages mentioned in the said Act, the Persons thereby appointed and authorized may, for the paving the said Streets,* &c *so far as the Church or Church yard extends, assess the Inhabitants of the Parish at a reasonable Rate, to be paid by the Church-wardens of every Parish for the time being, who, in the behalf of the Parish, are required by that Act to pay the said Rate,* 22 & 23 Car. 2 chap. 17.

Choice of Surveyors.

The Business of the Church-wardens is to be conjunct with the Constables, in choosing the Surveyors for the High Ways,

and

and appointing proper Days for their Work; also in the Oversight of the High Constables, to account for Money's levied by way of Forfeitures relating to the High-ways; and with the Assistance of two Justices of the Peace, one to be of the Quorum, oblige the High Constable to account for, and pay the Money so coming to his Hands; and to execute the Justices Warrant for Forfeitures and Penalties for not cleansing the Streets or repairing the High-ways, 14 Car. 2 ch. 2.

The Church wardens taking to them the Assistance of the Overseers of Poor, have Power to execute the Warrants directed in the Woolen Burying Act, and levy the 5l. Penalty by Distress and Sale of Goods for Non payment, to be employed to the Poor of the Parish where such Offence is committed, 18 Car. 2. ch. 4.

In London, Westminster, *the Borrough of* Southwark. *&c. The Church-wardens, together with the Constables, Overseers of the Poor, and Surveyers of the High-way in every Parish respectively, or a greater number of them, are on* Monday *or* Tuesday *in* Easter *Week yearly, upon giving publick Notice to call together such other Inhabitants as have borne the like Offices, to nominate and make choice of two fit Persons, being Tradesmen of their Parish, to be Scavengers for the Lanes and Streets, other open Passages of each Ward or Division within the said Parish, to continue for the space of a Year, or till others are chosen and settled in their place,* 2 W. & M.

At the end of the Year, or within one Month after at the farthest, the Church-wardens are to give up the account of their Receipts and Disbursements before the Minister and Parishioners, and upon quitting their Offices, to deliver up to the Parishioners such Money and things as are remaining in their Hands, that it may by them be delivered over to the succeeding Church Wardens by Bill Indicted, Cannon 89.

Upon refusal of this they may at the next Visitation-court be presented for it, or an Action of Account may be brought against them at Common-Law, by the Succeding Church wardens, to compel them to it, and their needful Expences and Disbursement upon the Account and business of the Parish, upon making up their Accounts, shall be allowed them.

As for Presentments, they are not obliged to make them above once in the Year, where by custom it has been no oftner a use, nor in any Dioces whatsoever above twice a Year, unless it be at the Bishop's Visitation; and for such Presentments of every Parish-Church or Chappel; the Register of the Court where they are Exhibited, is to receive no more than 4s a Year, for his so Registring them. But the Church-wardens of their own accord, may oftner make their Presentments Can. 116.

One of the times of Presentment, is ever to be about a Fortnight after Easter, *and at that time they are to resign their Office to the Succeeding Church-wardens, and the new ones cannot be Sworn before the old ones have given in their Presentments; and every Parson, Vicar, or in their Absence their Curates, in the said Presentments, are to joyn with the Church-wardens,* &c. *And upon the refusal of the Church-wardens to make Presentments, the Parson, Vicar, or their Curates in their Absence, may make their Presentments to their Ordinances at all such times, and when else they shall think fit,* Canon 118.

It is provided that no Church-warden, Sidesmen, or Questmen, shall be cited or called, but only at times limited to appear in the Ecclesiastical Court, or before any Ecclesiastical Judge whatsoever, for refusing to present any Faults committed in their Parishes at other times, and by the Ecclesiastical Law punishable, nor be farther troubled after their Presentments delivered at the usual times, unless it manifestly appear they have wilfully neglected, and wittingly omitted for Favour Affection, or otherwise, to present some one or more notorious Crime, or Crimes; upon just cause arising, to call them in order to Explain their former Presentments; and the Ordinary, in the Ecclesiastical Courts, in case of willfull Perjury the Law has provided Canon. 117.

Grounds of Presentments.

1. Whether the Church, Chancel, Bells and Ropes be in good Repair. The Lord's-Prayer, Ten Commandments, and Creed be drawn in fair Letters; what Assesiments are made forthe Repair of the Church, and the

the Names of such as make default in paying them; whether there be a Common Table, Carpet, and Font in the Church, and all other necessary and useful Ornaments in Church and Church-yard; whether the Parsonage-house, and Out-houses are in good Repair.

2. Whether the Parson, Vicar, or Curate Read the Common-prayer at Morning and Evening Service, with his Surplice, or Preach every Lord's-day, Read Homilies, Catechise, keep Preambulation, Preach sound Doctrin, and use no Seditious Expressions against the Government; whether he celebrate the Lord's-supper at least three times every Year, once to be at *Easter*; whether he Baptize Infants with Godfathers and Godmothers, bury the Dead according to the form prescribed in the book of Common-prayer, Preach in his Gown, visit the sick, and Pray with them; whether he Marry Clandestinely; that he be a Sober Man, live Chastly, and be a Peace-maker in his Parish; whether once every Year at least be Read the Canons to the Parishioners, and twice every Year the 39 Articles.

3. Whether the Parishioners at due Age resort to the Parish-church to hear Divine Service, and there reverently and decently behave themselves; whether any work or sell Wares on the Lord's-day, *&c.* Whether Vintners, Inn-keepers, or Ale-house keepers, keep Tipling in their Houses on the Lord's-day.

4. Whether any be Married within the prohibited Degrees, or be Adulterers, Fornicators, Swearers, Drunkards, Blasphemers, Sorcerers, *&c.* Whether all the Parishioners above 16 Years receive the Communion, at least thrice in the Year, *Easter* to be one time; whether any unseasonably keep their Children from being Baptized, or Women decline the usual Time of being Churched after their Delivery; whether any bring not their Dead to be decently Buried after the Service of the Church; whether any have been Married without the Publishment of Banns, or License, or at unlawful Hours; whether their Hospitals, Alms-houses, Schools, or Spittles, if any belong to them, be well and Godly used, or any thing detained from them; what

what Legacies are given to Pious Uſes, and if the Pariſhioners are orderly placed in their Seats, without Contention.

3. Whether the Pariſh-clerk, or Sexton, be duly Choſen, can Write, Read, make the Reponſes, and be an honeſt man, If the School-maſter, Uther, Phyſician, Chyrurgeon, or *Midwife* if any be in the Pariſh, Teach or Practiſe without Licenſe? Whether the Church-wardens be duly choſen in the week after *Eaſter*, by the Miniſter and Pariſhioners, according to the *Canon* or *Cuſtom*: Whether the old *Church-wardens* have been careful to keep the *Church* in Repair, to keep, and carefully to ſecure, all Furniture belonging to the *Church*, *&c.* And whether, in the middle of Divine Service, they walk out of the *Church* to viſit Taverns, Inns, Ale-houſes, *&c.* where Tippling may be uſed, and to ſee who are Loytering, or Exerciſing any Sports on the Lord's-day.

Preſidents for Church-wardens.

The Church-wardens have no Action at Common-Law to recover a Legacy never in their Poſſeſſion: But for any Goods and Ornaments of the *Church*, being once in their poſſeſſion and cuſtody, they may maintain an Appeal of Robbery againſt any one or more Perſons that Steals them, and an Action of Treſpaſs againſt him that does, without Right, take them away, even againſt the Parſon or Vicar ſo offending; and the Damages ſo to be recovered againſt ſuch Offenders, ſhall be converted to the Uſe of the *Pariſh*. But if it ſo fall out that thoſe *Church wardens*, from under whoſe *Cuſtody* the Goods were taken; chance to Die before they have brought any ſuch Action, the ſucceeding *Church-wardens* have no Right, by Law, to bring an Action for the ſame Goods.

If a *Church-warden* preſents, that any *Pariſhoner*, certifying his Name, is a Railer, common Diſturber, or ſower of diſcord, among the Neighbours, unleſs it be done in the *Church* or *Church-yard*, a *Prohibition* lies

lies, if the Presentment be made in the Ecclesiastical Court, because it is the Leet, and not in the Church-warden, if the Offence be committed elsewhere, that is to present it.

If any one take the Organs out of the Church, the Church-wardens may bring an Action of Trespass; for the Organs appertain to the Parishoners, and not to the Parson; so no Action will lye in the Parson's Name, nor can he Sue the Party that took them in the Ecclesiastical Court.

If a Bell be broke, the Church-wardens may have an Action against him that so broke it, or caused it to be broken, and recover Damages to the Use of the Parish.

If any one be Sued in the Ecclesiastical Court, for refusing to Feast and Entertain the Church-wardens, and those that go with them in their Preambulation or Procession, with Bread, Cakes, Cheese and Ale, though his Ancestors, living in the same House, had done it on the like Occasions, time out of mind, a Prohibition will lie against it; for that in such cases the Church-wardens claim it in the nature of a Corody.

If a Suit be commenc'd by the Church-wardens in the Court Ecclesiastical, for a *Church way*, claimed as a Right belonging to all the Parishoners by Prescription: Here a Prohibition lies, it is Temporal *Case*, and not in the Jurisdiction of the Spiritual *Court*.

Overseers.

All Overseers ought to be credible, honest, substantial Men. They are to be yearly chosen, and joyned with the *Church-wardens* of the Parish, in the Oversight, due Regard, and care of the Poor; they are to be made choice of by two or more of the Justices of tee Peace, one to be of the *Quorum* who are enjoyned yearly, at *Easter*, or within a Month after, under their Hand

Hands and Seals, to appoint Four, Three or Two Substantial House-keepers, according as their Parish requires, to be joyned with the Church-wardens, to oversee and look to the Poor in their Parish, according to the Statute of 43 *Eliz.* c. 2. 21 *Jac.* 1. c. 28.

In this case the major part of the Officers, without the remainder, may do any thing belonging to their Office, with the allowance and consent of them, either in particular or general, with two Justices of the Peace, one to be of the *Quorum*, and when they are not hindred by just Occasion, the Excuse to be allowed by two Justices of the Peace; they are to meet on the Lord's-day in the Church monthly, after Evening-Prayer, to consult of such Matters relating to their Office, as may turn to their best Advantage; and upon neglect, without such reasonable Excuse, are liable to forfeit 20*s.* for every Default, 43 *Eliz.* *Wingate's* Abr. Tit. *Poor People.*

And if, according to the 43 *Eliz.* they be not regularly and duly appointed, then every Justice of the Peace, or Head Officer of that Division forfeits 5 *l.* which may be levied by a Warrant or Sessions, and employed to the Use of the Poor where such Default is made.

Of the Poor, there are reckoned three sorts of degrees; and first, those by Defect and Impotency, as the Aged and Decripid, being past their Labour.

The Infant, Fatherless and Motherless, not capable of being set on Work.

Those naturally Disabled, either in Wit or Members, as the Lunatick, Ideot, Lame, Blind, and the like, not being capable or able to Work; and Persons being visited with grievous Sickness and Diseases, though Casually; however, being for a time, thereby rendered Impotent.

These in their degrees, are to be provided for, and the Overseers are to take care they have necessary Relief, and such proportionable Allowances as shall appear convenient, according to the measure and continuance of their Needs and Maladies.

Secondly, Such Poor by Casualty, such as are casually Disabled or Maimed in Body, as Labourers, Soldiers, Mariners, *&c.* Maime, or so Disabled in their proper and lawful Calling. Also the decayed Housholder, by Casualty of Fire, Losses at Sea, Suretiship, Robbery, or Decay and Loss in Trade, *&c.* A poor Man or Woman over-charged or burthened with Children, and not able to keep them by their Labour. All these, and the like, having Strength and Ability of Body, but no means whereby to Sustain themselves or Children, are to be set to work; but if the Profit thereby arising, procure not a sufficient necessary Maintenance, so that they cannot live thereby, they are Objects of Charity, and to be relieved at the Charge of the Parish, in some reasonable Proportion and Measure, as their respective Wants and Necessities shall render them deserving, in the just Opinion of the Overseers, under whose Care they are.

Thirdly, Such as are Thriftless, who have wasted what they had by Prodigality and Riotousness, Playing, Drinking, Debauchery, and the like, or such as are Dissolute, Strumpets, Pilferers, Idle Persons refusing to work, Vagabonds that will settle in no place, nor be content with Service; and for these the House of Correction is appointed, where they are to be sent; and if of able Bodies, put to hard Labour, to maintain themselves by it, without being chargeable to the Parish, Town or County, for any Allowance, however, they are not to be suffered to perish for Want; but in case any of these last sort prove Impotent, by Sickness, want of Ability of Body, or that their Work will not supply what is needful for the Necessaries of Nature, then in their extream Necessity there must be an Allowance by the Town, *&c. Dalt. Just. P.* c. 73. Fol. 170. And where the Parents are able to work for their Children, so that it will maintain them, they may be compelled to do it; but if over-burthened, the Overseers, at their Discretion, may take what Children they think fit off their hands and put them Apprentice, or otherways dispose of them

them to Nurſes, or elſe allow the Parents ſomething to enable them to keep them.

The Father, Grand-father, Mother, Grand-mother, Children and Grand-children, are obliged to relieve thoſe ſo allied to them, that are poor and impotent, if themſelves are of Ability, in ſuch manner as the Juſtices ſhall order it at their Quarter-Seſſions, by aſſiſting the Party or Parties, and upon obſtinate Refuſal or neglect to obey their Order, a Penalty of 20 *s.* every Month is forfeited to the Poor of the Pariſh, to be levyed by the Church-wardens, Overſeers, or one of them, by Diſtreſs and Sale of the Offender's Goods, having firſt, to that end, received a Warrant under the Hands and Seals of two Juſtices of the Peace, one to be of the *Quorum*, and in defect of ſuch Diſtreſs, the Juſtices may commit the Offender to Priſon without Bail or Mainprize, to remain there till the Forfeiture be paid, 43 *Eliz.* 2 *Dalt. Juſt. P.* c. 73. Fol. 156. *Reſol. Judges* 16, 17. But a Grand father-in-Law, if he has no Eſtate with the Grand-mother in Marriage, or that after comes to her, is not held liable to this, though he brings her conſiderable of his own, or is afterward inabled by his Induſtry, or at leaſt, if the latter, which is held doubtful, he is obliged to it no longer than his Wife lives. *Second Part of Bulſt. Reports*, Fol. 245, 246, 247.

If any Poor Beg in the Pariſh, a Licenſe muſt be granted for it by the Overſeers; and if in the Highways, by thoſe Overſeers. And by an Order of Seſſions, a Cottage may be erected on the waſte of a Mannor, and poor Inmates may be lodged therein; but it is afterward to be employed to no other Uſe. And ſuch Poor as cannot get Work, and are able, are to be ſet on Work by the Overſeers; and a Juſtice of Peace may ſend ſuch to the Houſe of Correction, that being employed by them and the Church-wardens, will not work, being not otherways able to maintain themſelves; and they, with the conſent of two Juſtices of Peace, or more, one being of the *Quorum*, may ſet up, occupy, and uſe any Myſtery, Trade or Occupation,

for the better Relief of the Poor in the Parish, Town or place within their Districts, to set them on Work, which is very commendable, and may be wished it were more put in practice.

Poor Children.

Due Care must be taken of all indigent Children, that they must be so placed, as not again to be chargeable to the Parish, and that they may learn such suitable Crafts and Mysteries, as when their time expires, with Labour and Diligence they may be enabled to keep themselves and Children, their Age to be above Seven, and under Fifteen, when they are so placed; and in doing this, the Overseers must have the consent of two Justices of the Peace, and they may Bind Men-children to the Age of 24, and the Female to the Age of 21, or till she be Married, which first shall happen; but it must be within the *Parish* or *Hundred*; and they may give Money, if they cannot put them off without; and the Master's refusing to take them, when so offered, may be presented and indicted for the same, upon the Statute of 43 *Eliz.* at the Assizes or Sessions of the Peace; and Parents refusing to let them be so put Apprentice, without good cause shewed for it, may, by the Justice, be bound over to answer the Default; and the Children refusing, may be sent to the *House of Correction*, till they will comply. He or she must be Bound by Indenture, and the word Apprentice specified in it, or else it is not Binding.

The Form of an Indenture of an Apprentice, put out and Bound by the Overseers, &c.

THis Indenture made the Eighteenth of September, *in the Eleventh Year of the Reign of our most Gracious Sovereign Lord* William *the Third, by the Grace of God, of* England, Scotland, France *and* Ireland, *King, Defender of the Faith, &c. Annoq; Dom.* 1700. *witnesseth, That* G. H. *and* N. O. *Overseers of the Poor in the Town of* Buckingham,

ham, *and* B. E. *Church warden of the same Town, by and with the consent of* R, S. *Esq; and* W. T. *Esq; two of His Majesty's Justices of the Peace of the County of* Buckingham, *have, by these Presents, placed and Bound* J. K. *being a poor and Fatherless Child, as an Apprentice to* J. E. *of* Buckinhim *aforesaid, Taylor, and as an Apprentice with him the said* J. E. *to dwell from the day of the Date of these Presents, until he the said* J. K. *shall come to the Age of* 24 *Years, according to the Statute in that Case made and provided; by and during all which Time and Term, the said* J. K. *shall the said* J. E. *his Master, well and faithfully Serve in all such lawful Business as the said* J. E. *shall put him the said* J. K. *unto, according to his Power, Wit and Ability; and honestly and obediently in all things shall behave himself towards his said Master, and all the rest of the Family of the said* J. E. *And he the said* J. E. *for his part promiseth, covenanteth and agreeth, that he the said* J. E. *the said* J. K. *in the Art and Mystery of a Taylor, in the best manner that he can or may, shall Teach, Instruct or Inform, or cause to be Taught, Instructed or Informed, as much as thereunto belongeth, or he the said* J. E. *knoweth. And also during all the said Term, to find unto him his said Apprentice, Meat, Drink, Linnen, Woolen, Hose, Shoes, Washing, and all other things necessary or needful for an Apprentice. In Witness whereof we the said* J. E *and* J. K. *have interchangeably set our Hands and Seals the Day and Year aboveſaid.*

Poor.

By Settlement of the Poor, it is here meant such as are likely to be troublesome and chargeable to the Parish or place where they reside. And by the 13th and 14th of *Charles* II. chap. 12. The Overseers and Church-wardens making their complaint to any Justices of Peace within four days, after any person that is poor and likely to trouble the *Parish*, cometh to settle in a Tenement under 10*l.* by the Year, two of the Justices, one being of the *Quorum*, by Warrant under their Hands and Seals, may remove such a person to the Parish where they last had a legal Settle-

ment by the ſpace of Forty days or more; unleſs Surety can be by them given, that the Juſtices ſhall approve of, to ſecure the Pariſh, &c. from Damages or Charges that may enſue, and all perſons agrieved, have free Liberty to appeal to the Quarter-Seſſions.

In Harveſt, or Work time, poor perſons ſettled in a Pariſh, having a Certificate under the Hand of the Miniſter of the pariſh, one Church-warden, and one Overſeer of the Poor, declaring them Inhabitants there, may go into any of the adjacent or diſtant pariſhes to work, and if they do not return by reaſon of Sickneſs, or any other Impediment, it ſhall not be accounted an Impediment, tho' they ſtay till after their work is done; and if any return from the pariſh from whence they are removed, it is in the power of the Juſtice of the Peace to ſend them to the *Houſe of Correction*, where they may be puniſhed as Vagabonds, or, at his Diſcretion, he may ſend them to a common work-houſe, there to be employed at hard Labour; and upon the refuſal of the Church-wardens and Overſeers of the poor to receive them, and find them Work &c. they may by the Juſtice, be bound over to anſwer it at the Seſſions or Aſſizes.

Making Rates.

The Overſeers of the poor with the Church-wardens, or the major part of them, for enabling them to perform the things they in charge, may raiſe weekly; or otherway, by Taxation of every Parſon, Vicar, and the Occupier of Land, Houſe or Tithes, Colemines, or underwoods ſaleable within their Pariſh or Diviſions, ſuch a ſum as in moderation they ſhall think fit; but the Rate muſt be allowed and confirmed under the Hands of two Juſtices, one being of the *Quorum*, and then may be levied by Diſtreſs and Sale of Goods upon refuſal of Payment or neglect, by Virtue of a Warrant from any other two Juſtices, one being of the *Quorum*, rendering the over-plus to the Owner; and for default of diſtreſs, two Juſtices may commit the

part

party to remain in Prison, without Bail or Mainprize, till payment be made or Justices think fit to discharge him, 43 *Eliz.* ch. 2 *Dalt. Just. P*, ch. 73. fol. 148. *Wingate's Stat. Tit.* poor People. And these Rates ought to be made according to Mens real and visible Estates, within the place only, and not according to Estates, elsewhere. And further,

Observe, that a parish in Reputation is deemed good within this Law: For granting *G.* a Parish very Antient, having Officers in it, nevertheless here is a Town within the Parish, that for time out of Mind, at least a long time hath been used and reputed as a parish, and hath all parochial Rights, as Church-wardens, *&c.* In such a case it may be Rated as a parish towards the poor, *Hutton's* Report, fol. 93. and others.

And there must be care taken in Rating and Levying this Tax for it must lye on the Tenants Occupying Land, *&c.* and not on the *Land-lord*, in nor out of the parish. for the first is not only chargeable for the *Land*: *Bulstrid*, 1 part, *Rep.* 354.

Any Parson having a full Tenth in a parish, may be Rated a Tenth part, *Resol. Judges* 1633. *Sect.* 33.

If any person occupy *Land* lying in several parishes, he must in this Rate be accountable for them proportionably in the parishes where they lye; but it seems reasonable that for his present Estate, he should be charged in the parish where he is an Inhabitant.

In Rating Stock or Goods, it is to be Rated according to the proportion of *Land* Rent, at 5 or 6 pounds a Year in *Land* to be held equal with 100*l.* in Goods or Stock.

In a parish where the Inhabitants by reason of their own poverty or fewness, are not able to relieve their poor, two Justices, one being of the *Quorum*, may by Rate Tax other places and Parishes within the Hundred if necessity requires it; and this not proving sufficient, the Justices in their Sessions may Tax the County in part, or wholly if they think fit, 43. *Eliz. Wingates Abridg. Stat. Tit.* poor people. And if any person find

himself agrieved by any Act done by the Justices of the Peace or Overseers, they may for Redress apply themselves to the Justices in the Quarter-Sessions, *Dalt. Just. P.* ch. 73. fol. 160 *&c.*

Giving up Accounts.

If a Parish shall reach to and lye in two Counties, or one Part thereof to lye in any City or Corporation Town where there are proper Justices, in that case the Justices of each County are to meddle so much as appertains to the party lying in the County of which they are Justices, and so of the other parts, and yet the Overseers shall without dividing themselves, execute their Office in all places within the said Parish, but shall give up their Account to the Justices or Head Officers of both Places, *Wingates Abridg. Stat. Tit.* poor People, 43 *Eliz.* ch. 2. *Dalt. Just. P.* ch. 73. fol. 156.

The Overseers of the Poor are, within 4 Days after their Year is expired, and other Officers nominated their Successors, to give up their Account in Truth before two Justices of the Peace, one to be of the *Quorum*, chiefly to this purpose.

1st. What Stock of Money they have received or Rated, and not come to their Hands. 2d. What Stock of Stuff or Ware is in their own, or in the Hands of any of the Poor. 3d. What Apprentices they have put out, and bound according to the Statute 44th. What Poor they have suffered to beg or wander out of the Town in the High-ways, or in their Town without their Directions. 6th. Whether they met Monthly to consider of such Matters as are properly belonging to their Office. 7th. Whether they have made their Rates indifferent upon the Parishioners, according to their Ability. 8th. Whether they have truly endeavoured to gather and levy all Assessments. 9th. Whether in them there has been any neglect of the Justices Warrants directed to them on any Account, especially those for collecting any Forfeitures, according to

to the Statute, 43 *Eliz.* ch. 2. *Dalt. Juſt. P.* ch. 73. fol. 153.

Note, By the Statute made for the Burying in Woolen, 30 *Car.* 2. the Juſtices may not allow the Accounts of the Overſeers of the Poor, till ſuch time as they have given them an Account of the Burials and Certificates, and of their levying the Penalty by that Statute directed.

If they refuſe to give in their Accounts, or make and yield a true and perfect Account to the ſaid Juſtices, of ſuch Money and Stock in their Hands, as has been mentioned, two Juſtices of the Peace, one being of the *Quorum*, may commit them to the common Gaol, not to be diſmiſſed till they ſhall render a true Account, and payed or ſatisfied the ſucceeding Overſeers, ſo much of the Sum and Stock as ſhall any ways appear to be remaining in their Hands, and upon making a falſe Account, lye liable to be bound over to the Seſſions or Aſſizes, where an Indictment may be preferred againſt them, *Dalt. Juſt. P.* ch. 73. fol. 121. Or the Juſtices, or any two of them may grant a Warrant to the ſucceeding Overſeers, to levy the Sum upon the Goods and Chattels of the Offenders, by Diſtreſs and Sale, and for want of ſuch Diſtreſs, may commit them to Gaol till Satisfaction be. But Note, upon Sale the Overplus is to be returned to the Owner. 43 *Eliz.* ch. 2.

If it ſo happen that any part of ſuch Stock ſhall be found or known to be in the hand of any Poor, upon refuſal of Delivery, two Juſtices may by Warrant cauſe the Value to be levied, or for want of wherewith on which to make Diſtreſs, commit the Party to Priſon, as in the former Caſes, *Dalt. Juſt. P.* ch. 72. *Ibid.*

And for theſe and all other Faults and Negligences of Churchwardens and Overſeers, relating to the Execution of their Office, as to the Poor, *&c.* for every ſuch Default made by any of them, he is to forfeit 20 *s.* upon Proof, by Confeſſion, or Examination of Witneſſes, to be levied by Warrant of two Juſtices of the Peace, by Diſtreſs and Sale of Goods, or for

want

want of it, the Offender to be Impriſoned, and the Money ſo levied to be Employed to the Uſe of the Poor of the Pariſh, *Dalt. Juſt. P.* ch. 73. fol. 157. 23. *Eliz.* ch. 2. So that by the Law great Care is taken that theſe Officers ſhall not be wronged in their juſt Rights, nor the Pariſh or Poor be wronged by them.

Fines for Poor's Uſe.

It is the Buſineſs of the Overſeers of the Poor to receive ſuch Fines or Forfeitures as accrue from Offences in ſuch, as in the Night-time Kill, or take any *Coneys* upon the Borders of Warrens, or ſuch Grounds where the Owner may lawfully keep *Coneys*, the *Parties* ſo Killing or Deſtroying, not being *Proprietors*, nor allowed by the Owner.

Alſo of ſuch as uſe Hare-pipes, Snares, or ſuch like Implements, or take Fiſh by any Nets, Angling, or other Device, in any Water or River not lawful, or ſhall by aſſiſting thereunto, without the conſent of the Lord of the Mannor or Owner of the Water; and the Sum for theſe Offences is to be amerced by the Juſtice of Peace before whom the Party offending ſhall be convicted, the Sum not exceeding 10 Shillings, over and above what the Owner may have, or recover his Damage ſuſtained for; and the Party for default of Payment may be ſent by the Juſtices to the Houſe of Correction, for any time not exceeding a Month, unleſs he enter into Bond with one or more Sureties to the Party aggrieved, the Sum not exceeding 10 Pounds, never in the like manner to offend any more; and for theſe Offences, the Offenders Goods are liable to Diſtreſs and Sale, but then the Impriſonment muſt be remitted upon Satisfaction that way made, 22 *&c.* 23 *Car.* 2: ch. 2.

Weights and Meaſures.

The Overſeers for the Poor, as well as other Officers, ought to have a ſpecial Regard to them, and in this caſe

caſe there ought to be one Weight, one Meaſure, and one Yard, according to the Exchequer Standard in every Part of the Realm, as well within as without places priviledged; and every Meaſure of Corn is to be ſtriked, and thoſe that keep different Weights and Meaſures not agreeing in all reſpects with the Standard to buy and ſell by, being convicted thereof by the Oath of two Witneſſes, before any Juſtice of Peace, or Head Officer of the Town or Place where the Offence is done, ſhall forfeit 5 Shillings, to be levied by the Church-wardens or Overſeers of the Poor in the Pariſh where the Offence is committed, by Diſtreſs and Sale of Goods upon Warrant, and for want of ſuch Diſtreſs the Offender to be committed to Priſon without Bail till Payment be made, and if any Perſon be troubled for any Matter concerning his Office, in this caſe he may plead the General Iſſue, and give in Evidence, the Act of 17 *Car.* 2. And to have treble coſts if the Suit ſo brought prove Vexatious, *Dalt. Juſt. P.* 112. fol. 246, &c.

Burying in Woolen.

The Penalty of 5 Pound is to the uſe of the Poor, where any Perſons ſhall be buried in any Garment, Winding ſheet, Shroud, or any other Materials not made of Sheeps Wooll only; or if the Coffin the Dead Body is put into, be lined or faced with any thing made of any Material but Sheeps Wooll; and the Church-wardens and Overſeers of the Poor are to take care of this in all Reſpects that the Forfeitures be duly Levied. See more, 30 *Car.* 2. ch. 3, &c.

The Scavengers Duty.

No Perſon under the Penalty of 5 Shillings, is to throw any Dirt, or Rubbiſh, or Noiſome thing into the Streets that may be a Hinderance or give Offence, nor into any Lanes, or Places of publick Paſſage, &c. or againſt a Wall of any Church, Church-yard, or any Houſe

House; or if they throw it into any common Vault, or Sink, to hinder the Current of the Drains, they forfeit 40 *s.* 14 *Car.* 2. ch. 2. And those that sweep not up their Dirt for the Scavenger to take away before their Houses in Streets, Alleys, and other publick Places, forfeit 13 *s.* 4 *d.* for every Neglect, 13 *Car.* 2. ch. 2.

If any Hoop, wash or cleanse any Barrels or other Cask, or set out empty Cask to mend, or hew rough Timber, saw Stone, for each of these Offences they are to pay 20 *s.* and every Householder is to keep the Streets, Lanes, and other publick Passages, so far as belongs to him paved, well paved unto the Channel, or middle of the Street or Lane, under the Penalty of 20 *s.* for every Rod that shall be defective, and 20 *s.* a week till it shall be paved or mended. To enquire after Offenders, and make such Redresses as are found Aggrievances, by applying themselves to the Commissioners, *&c.* and by the Statute of 2 *W.* & *M.* among other things it is enacted, That the Rakers, Scavengers, and other Officers thereto appointed, shall every Day in the Week, *Sundays* excepted, and other Holydays, bring their Carts and other Carriages unto their several Charges and Divisions where they can pass, and give Notice at or before by the Ringing of a Bell there, and in Alleys, and other Places where they cannot pass, that the People may sweep up, and bring out their Soil, which the Rakers are every Day obliged to carry away under Penalty of 40 *s.* for every Offence.

Within twenty Days after the Scavengers are elected, the Constable, other Officers and Parishioners, or the greater Number of them present, are to make a Rate or Assessment, according to Pound-Rate upon the Inhabitants of their Parish, to be allowed and confirmed by two Justices of the Peace of the Place, *&c.* to be collected Quarterly; and if, upon demand of the Scavenger, or other Officer appointed to collect the same, Payment be refused, Distress may be made by Warrant under the Hands and Seals of two Justices of the Peace

Peace, to be levied by Diſtreſs and Sale of Goods, or for want of ſuch Diſtreſs and Non-payment, the Offender to be Impriſoned till Payment be made, unleſs a Peer of the Realm.

The Money ſo collected is Yearly to be accounted for by the Scavengers, for the time being, to two or more of the Juſtices of the Peace reſiding in or near the Places, for which Scavengers are appointed, within 28 Days after the new Scavengers are choſen for the Year enſuing, and to be paid into the Hands of the new Scavengers, if any remain undiſburſed in their Hands; and two ſuch Juſtices of the Peace, upon refuſal to make Account, may commit the Refuſer or Refuſers to Priſon without Bail or Mainprize, till he or they Account and pay the Remainder.

Where in a Pariſh there are ſuch High-ways as cannot be amended without the Help of Aſſeſſment, then one or more Aſſeſſments from time to time may be made upon all the Inhabitants, Occupiers and Owners of Lands, Houſes, Tenements, or any Perſonal Eſtate there, uſually ratable to the Poor, to be allowed, levied, and collected by ſuch Perſons as the ſaid Juſtices of the Peace, at their General Quarter-Seſſions, ſhall appoint and direct, and the Money ſo raiſed to be accounted for, and employed towards repairing ſuch High-ways from time to time, as the Juſtices ſhall appoint or order to be levied, by the Diſtreſs and Sale of the Goods of the Perſons ſo aſſeſſed, upon Non-payment of the ſame within 14 Days after Demand.

All the Sinks, Sewers and Vaults made ſince the 12th of King *Charles* the Second, in the City and Liberties of *Weſtminſter*, &c. are under the care of the Commiſſioners of Sewers, who have Power to cleanſe, alter, or ſo order them as to them ſhall ſeem beſt for Conveniency, or to make new ones, and to take all Nuſances, and to take away any croſs Gutters or Channels in all or any of their Streets or Lanes within their Diviſion.

Ever

Every Truss of old Hay brought or offered to be sold within the Cities of *London* and *Westminster*, and other Places within the Weekly Bills of Mortality, is according to Statute to weigh 56 Pound at the least, from the last Day of *August* to the first Day of *June*, and from the first Day of *June*, to the last Day of *August*, being new Hay of the Years growth to weigh 60 Pound; but if old Hay of the last Years growth 56 as aforesaid, and none to suffer their Waggons or Carts to stand in the Places aforesaid, loaden with Hay or Straw, to sell the same after two of the Clock in the Afternoon, from *Michaelmas* to *Lady-day*, nor after 3 from *Lady-Day* to *Michaelmas*, on Penalty of 5 Shillings for every Offence or Neglect, one half to the Poor, and the other to the Informer, upon Commission of the Offence; but if the Justice of Peace see it on view, then upon Conviction one half to the Poor, and the other half to the Scavenger, upon default of Payment for the Paving and Cleansing the Place, or otherways to the relief of the Poor as aforesaid. This to be levied by Warrant, by Distress and Sale of the Offenders Goods and Chattels, by the Constable, Headborough, *&c.* of the Parish where the Offence is committed, and in Default of Distress or Non-payment within 6 Days upon Notice or Writing left at the Offenders House by the Constable, or Headborough, where it is not by the Act of 2 *W.* & *M.* otherways provided, unless the Party be a Peer of the Realm, he is to be committed to the common Gaol of the City or County respectively by Warrant; and to remain without Bail or Mainprize till Payment. And by the same Statute the Wheels of every Cart or Dray to be used for any Carriage whatsoever, from any Place within the said Cities, and Places within the same, where the Streets are paved, are to be made to contain in full Breadth 6 Inches in the Felly, and must not be shod or wrought about with Iron Work, nor drawn with above two Horses after they are up Hill from the Water-side, upon forfeiture of 40 *s.* for every Offence, to be levied by Warrant on Goods and Chattels,

in

in Diſtreſs as other the like caſes, though this extends not to Country-Carts or Waggons that ſhall bring Goods to the Cities or Places aforeſaid, or ſhall carry any Goods half a Mile beyond the paved Places of the Cities; Streets, *&c.* However, by an Act of 3 and 4 *W.* & *M.* ch. 12. this laſt Clauſe ſeems to be altered; for any Inhabitant of any of the Pariſhes within the Weekly Bills of Mortality, who dwell off and from the Pavement, and uſes his Cart as well off as upon the Pavement, or any Brewer or Scavenger or other Perſon imployed in carrying away the Dirt and Soil in Lanes, Streets and Alleys may uſe ſhod Wheels for Dray or Cart, and narrower than 6 Inches in the Fellies, notwithſtanding the former Act or any Law or uſage to the contrary. But this ſeems not to affect Cars, and ſuch as carry Merchants, or Shop-keepers Goods.

By the Act 2 *W.* & *M.* no Perſon or Perſons are to keep, breed, or feed Swine in any Part of the Houſe, Backſides of the paved Streets of the ſaid Cities, Boroughs, or Pariſhes, where ſuch Streets are contiguous, on Penalty of Forfeiting them to the Uſe of the Poor of the Pariſh where ſuch Swine ſhall be kept.

All Houſholders in the Cities and Liberties of *Weſtminſter*, and Counties of *Surrey*, and *Middleſex*, compriſed within the Bills of Mortality, are by a new Act, where their Houſes adjoyn to, and are near the Street, every Night, from *Michaelmas* to *Lady-day*, Candle, or Lights in Lanthorns, from time to time as it ſhall grow Dark, to continue Burning till 12 of the Clock in the Night, on Pain of Forfeiting 2 *s.* for every Default, unleſs ſuch as ſhall agree to pay and make uſe of the convex Lights or Lamps, to be placed at ſuch Diſtance in convenient Places of the Streets, as two or more Juſtices of the Peace ſhall approve of.

Fairs

Fairs, Toll-keepers, &c.

A Fair must be kept no longer than the Grant or Use by Custom will Warrant for what is Warrantable; and Goods so Sold after the Expiration of the Time, as Merchandize, *&c.* the Seller shall forfeit to the King double the Value of what is Sold, and the Prosecutor shall have the fourth Part; the Fair must be duly Proclaimed by the Sheriff, or Lord of the Fair, and the Time it is to continue mentioned, the Place or Ground appointed, set out, and care taken that there be no Riots or Disturbance, but an orderly keeping of it during the Time it lasts.

Where there is a Beast-Fair for Horses, Mares, Geldings, and other Cattel, they must have their appointed Places, that those that resort thither may have a certainty where to find them. And one sufficient Person or more, must be appointed to take Toll, and keep the same Place from 10 in the Forenoon, every Day, till Sun-set, during the time of the Fair or Market, upon Pain to forfeit for every Default 40 *s.* And in Tolling, the Party thereto appointed must have before him the Parties Bargaining, upon his Tolling any Horse, Mare, *&c.* and must write in his Book the Christian and Sir-names of all the Parties; also their Dwelling-Places, with the Colours, and some particular Marks of the Horse or Mare, *&c.* so Sold or Bargained for, on Penalty to forfeit for every Default 40 *s.* and he is to have one credible Person known to him to Vouch the Horse or Mare, *&c.* and testifie his Knowledge of the Seller, and his Name and Place of Abode must be entred with the others in the Book, with the Colour, Mark, or Price of the Horse or Mare, Sold or Exchanged, and the Buyer requiring it, may have a Note in Writing out of the Book, Reciting the Contract and Toll-man's Hand thereto, for which he may take two Pence.

If any Toll-keeper suffer Sale to pass without a Voucher, unless he well know the Party; and every Party

Party making a falſe Teſtimony, or Avouchment, or every Seller unknown, not bringing a Voucher, and cauſing the ſame to be entred, forfeits 5 *l.* one Moiety to the King, and the other to the Proſecutor and the Sale of the ſaid Horſe, *&c.* to be void. Yet notwithſtanding ſuch Vouching, the Owner of a ſtolen Horſe, *&c.* ſo ſold, his Executors and Adminiſtrators, claiming him within 6 Months after the Stealing, may Redeem at the Price he was ſold for, making Proof that it is his, and that it was ſtolen by two Witneſſes before a Juſtice of the County where he is found, or the Head-Officer or Magiſtrate of a Corporation, and the Price to be ſuch as the Buyer upon Oath ſhall teſtifie before the Juſtice, he paid for him; and if the Stollen Horſe be not ſold in open Fair or Market, and lawfully toll'd, the Right is the Owner from whom he was ſtole, and he may ſeize or replevy him in any Place where he finds him.

If any Perſon buy Oxen, Goats, Sheep, Calves, Heifers, *&c.* alive, he ſhall not ſell them again alive, till he has kept them in his Paſture by the ſpace of five Weeks.

Whoſo ſhall ſell or buy Corn without Meaſuring, being thereunto required, ſo ſelling or buying it in Sacks, or Bags, or in any other thing, ſhall forfeit the ſaid Corn, or the Value thereof, to the Party making his Complaint of this Offence againſt the Statute, 22 & 23 *Car.* 2. ch. 12. And upon complaint, the Defendant, by the Oath of one or more Witneſſes before a Juſtice of the Peace, muſt prove that he or they did buy or ſell according to the Statute of 22 *Car.* 2. or elſe pay the Forfeitures by the latter directed, which upon Warrant may be Levied by Diſtreſs and Sale of Goods; the Warrant to be given under the Hand and Seal of one or more Juſtices, before whom ſuch Conviction ſhall be, one half to the Poor of the Pariſh where the Offence is committed, and the other to the Informer, *Ibid.*

A Braſs Buſhel is to be chained to a Poſt, or publick place in the Market-place, at the charge of the Perſon taking Toll for the publick uſe of the Meaſuring, upon penalty of forfeiting 5 *l.* 22 *Car.* 2. cap. 8.

For Meaſure, there ſhall be only the *Wincheſter* Buſhel, and no other, and that to contain 8 Gallons; and whoſo ſells by any other, according to 22 *Car.* 2. cap. 8. forfeits 40 *s.* And upon the Clerk of the Market's refuſing to Seal ſuch Meaſure as ſhall be full Ganged, he forfeits for the firſt Offence 5 *l.* for the ſecond 10 *l.* Or if the Queen's Clerk of his Market of his Houſe exact, or take more Fees than his due; that is, above one Penny for Sealing a Buſhel, an Half-penny for half a Buſhel, and one Farthing for Meaſures of leſs proportion, he incurs, and ſhall undergo the penalty in the Statute, *Car.* 1.

The SURVEYORS *Duty.*

Mending High-Ways.

THough Ways are generally called the Queen's High-way, yet of Ways there are three ſorts: 1. A Way where Men have a juſt right to Walk in, paſs and repaſs. 2. A common Foot-way and Horſe-way. 3. A Way for Carts and Wains, and all ſorts of Carriages; and this latter is moſt properly called the Queen's High-way, free for her ſelf and Subjects to paſs and repaſs at all times; whereas ſome in the other Senſe, are Ways only to Grounds, Houſes, &c. And Ways by Cuſtom, and ſome again upon Sufferances in the publick Ways. All Nuſances or Stoppages are Indictable, eſpecially if not timely removed on notice given, or the Lord of the Soil for any digging or ſpoiling the High-ways, may bring his Action againſt the Offenders.

The Surveyors duly choſe by the other Officers, with the Advice of the Inhabitants, or the Major-part of them upon publick Notice before given, or diligently

gently to overſee thoſe that work on the Days appointed, for the Digging and carrying Gravel and other Materials, for Mending ſuch Ways where they ſhall find them defective, giving them Directions in order thereto; and upon publick Notice or Warning, the Perſons ſo qualified are to ſend their Carts and Labourers.

Every Perſon having in his own Occupation a Plough-Land, in Tillage or Paſture, or keeping a Plough or Draught in the ſame Pariſh, is liable to ſend, according to the Faſhion and Cuſtom of the County wherein he reſideth, or is ſo legally charged, a Wain or Cart with Oxen or Horſes, fit for Carriage and Work of this Nature, attended by two able Men, who ſhall do ſuch Work as ſhall be, by the Surveyors, appointed them, for the ſpace of Days, working 8 Hours every ſuch Day, under the Penalty of Forfeiting for every Days Default 10 *s.* and every other Houſholder, Cotter, or Labourer, not being a hired Servant, ſhall in Perſon attend the Service to Work, or ſend an able Man in his ſtead, under Penalty for every Days Default to pay 12 *d.* and all other Perſons, being no otherways chargeable; but Cottages being Subſidy, 5 *l.* in Goods, or 10 *s.* by the Year in Lands, or above, they muſt find two able Men to work in the Service.

It is in the Diſcretion of the Surveyors, if there be more Carts, Wains, *&c.* than are neceſſary, to appoint two able Men inſtead of a Team, on Forfeiture of 12 *d.* each, in caſe of Defect. And it in 6 Days the Ways cannot be conveniently mended, as is the uſual time, they may ſet a farther time; but then they muſt make Payment for it according to the Rate of the County; and if hereupon there be no Agreement, the Juſtice may ſettle the Rate.

If Materials be wanting, the Surveyors may take the ſmall looſe Stones from any Man's Quarry, and ſuch Rubbiſh as he finds there, it being near the Road, without Paying for it, but muſt not dig nor take away the great Stones. They may dig Gravel and

and Sand for the like Uſe, near any High-way, in other Men's Ground, not being their Houſe, Yard, Orchard or Garden, without paying for it, the Pit not exceeding 10 Foot in Breadth, and the like in Width; which, as ſoon as the Work is over, muſt be covered up and made good at their charge who cauſed it to be digg'd; or if it be not ſo filled up within one Month, they forfeit 5 Marks, to be recovered by the Owner, by Action of Debt.

All Owners of Ground adjoyning to the High-ways are to keep their Hedge low and upright, that the Boughs or Brambles ſtanding out may not hinder or offend Travellers, and that ſo the Sun may ſhine on the Ways to dry them, and ſuch as are negligent in this may be Preſented and Indicted, and thereupon forfeit 10 *s.* beſides their Charges.

And in caſe Ditches are ſtopped up with Mud, or Ouſe that ſhould be Drains to the High-way, ſo that the Water lies in it, and cannot have a current Paſſage, the Owner of ſuch a Dich or Water-drain ſhall forfeit 12 *d.* for every Rod ſo neglected to be ſcowred, by 18 *Eliz.* ch. 10. And the Surveyor hath Power to make Conveniencies for draining the High-ways, as Sluces, Out-lets of Water, *&c.* into any Man's Ditch or Ground, for the better and more ſpeedy Conveniency of paſſing the Road. If any Man, upon cleanſing a Ditch, caſt the Soil into the Road, and ſuffer it to lie there above the ſpace of ſix Months, he is liable to pay 11 *d. per* Load for as many as ſhall be adjudged to be there.

If a Juſtice of the Peace ſhall, upon his own Knowledge of any Nuſance on the Road, make a Preſentment, it ſtands good, and two Juſtices, one being of the *Quorum*, may make the Amercement or Fine to be levied on the Offender.

Theſe Officers, *viz.* Surveyors, have in their Care all Bridges within their ſeveral Pariſhes or Liberties, to ſee they are kept in good Repair, from time to time, at the Charge of the Pariſh, Hundred, or as the Cuſtom has been, and is continued; and if a Cuſtom has

has therein ceaſed for a time, it may be revived; for in ſome caſes particular Perſons are bound, by Tenure of Land, *&c.* to repair part or the whole of a Bridge, *&c.* without a Pariſh Charge. But to inſtance theſe particulars, would be too tedious for my intended Brevity; and many times a whole County lies chargeable to be Rated for the Repair of a Bridge, *&c.*

Draining High-ways.

A Surveyor may cauſe a Water-courſe or Spring in the High-way, within his Pariſh, to be turned into another Man's Ground, or his Ditch next adjoyning to the ſaid way, for the Conveniency of keeping the Road dry, as in his Diſcretion ſhall ſeem fitting, *Dalt.* c. 50. Fol. 130.

The Surveyors, or any one of them, have Power to preſent to the next Juſtice of the Peace every Default, upon the 2 and 3 of *Philip* and *Mary*, c. 8. and 5 *Eliz.* c. 14. within one Month after the Default made, on the Penalty of 40 *s.* and the Juſtice under Penalty of 5 *l.* muſt certifie the ſame at the next Quarter-Seſſions, where the Bench of Juſtices have Power to enquire of the Default, and to ſet ſuch Fine on the Offender, as any two of them, one being of the *Quorum*, ſhall think fit, 5 *Eliz.* c. 1.

If any Juſtice of the Peace preſent in Seſſions upon his own Knowledge, it ſhall be a good Conviction, whereupon any two of the Juſtices, the one being of the *Quorum*, may aſſeſs a Fine, as well as if the Matter had been found on the Verdict of twelve Men: But in this caſe the Offender ſhall be, as in other caſes, admitted to his Traverſe, 5 *Eliz.* c. 13. *Raſt.* 199. and all ſuch Fines and Forfeitures are to be beſtowed and employed towards the Mending and Bettering of the High-ways in the Pariſh, where the Offences are committed, *Wing. Abridg. Stat. Tit. High-ways*, 2 and 3 *P.* and *M.* c. 8.

Where

Where Surveyors have laid out their Money for Materials to mend the Ways, where without there were none fitting to be had, it is enacted 2 and 3 of *William* and *Mary*, That upon notice given by the Surveyors of High-ways, to the Juſtices of the Peace, at their Grand Seſſions, and Oath made of what Sum or Sums of Money are expended to that Uſe or Behoof; the Juſtices thereupon, or any two of them, under their Hands and Seals, may cauſe an equal Rate to be made, for the reimburſing the Surveyor or Surveyors, the Moneys by them to the Uſe aforeſaid laid out, upon all the Inhabitants of ſuch Pariſh or Townſhip where it was expended, in Rates according to the Rules and Methods preſcribed in 43 *Eliz.* c. 2. for the Relief of the Poor; which Act directs the Tax to be laid on each individual Inhabitant, as Parſon, Vicar and others; and every Occupier of Houſe or Land, Tythes Impropriate, Impropriations of Tythes, Colomnies or Saleable under Woods in the ſaid Pariſh, ſo to be Rated; and the Rate ſo allowed and ſettled by the Juſtices, in their ſaid Seſſions, ſhall be gathered and collected by the Surveyor or Surveyors of the High-ways; and if any one refuſes to pay the Money according to the Rate aſſeſſed, it is lawful for the Surveyors to levy it by Diſtreſs and Sale of Goods and Chattels of the Perſon's ſo refuſing, reſerving reaſonable Charges for making the ſaid Diſtreſs, and rendring the Overplus to the Owner, if any there be.

By the 3 and 4 of *William* and *Mary* is farther provided, That whereas the Fines impoſed and ſet on the Preſentment of a Juſtice of the Peace, and other Fines and Iſſues, for not repairing the High-ways being oftentimes returned into the Court of Exchequer, and other Courts, and ſo levied upon ſome particular Inhabitants, and no Proviſion made to reimburſe them; now on the contrary, Fine, Iſſue, Penalty or Forfeiture, ſhall not, for the future, be returned into any of the ſaid Courts, but be levied and put into the Hands of the Surveyors, to be applied towards the Repair

Repair of the ſaid High-ways; and if it be hereafter levied on one or more of the Inhabitants, his or their Complaint for Redreſs, lies to the Juſtices of the Peace, at their ſpecial Seſſions; and they, or any two of them, by Warrant under their Hands and Seals, may cauſe a Rate to be made, according as before ſet down, for the Repair of the High-ways, or of ſuch Inhabitant or Inhabitants, as the Money ſhall be levied upon; which Rate ſo made and confirmed, ſhall be collected by the Surveyor or Surveyors; and he or they, within a Month next after the making and confirming the Rate, muſt pay unto the Inhabitant or Inhabitants ſuch Money ſo levied as aforeſaid.

Reſcues upon Seizure.

If any Perſon or Perſons ſhall reſiſt or make forcible Oppoſition againſt any of ſuch Perſons employed in the due Execution of the Acts of Parliament 2 and 3 *P.* and *M.* 5 and 18 *Eliz.* 22. *Car.* 2. made for the more effectual Amendment of the High-ways, or ſhall Reſcue any Goods or Cattle taken in Diſtreſs, by Vertue thereof, being convicted by the Oath of one credible Witneſs before any one Juſtice of the Peace, or by the View of the Juſtice himſelf; for every ſuch Offence the Offender ſhall forfeit 40 *s.* and if not paid in ſeven Days, the Party to be committed to the County Gaol, where the Offence was committed, to remain till paid; and this is to delivered to the Surveyor or Surveyors of the High-ways in the Pariſh where the Offence was committed, and imployed for the Amending the ſaid Ways, 22 *Car.* 2. c. 12.

All Traveling Wains, Carts or Carriages by way of common Carriage, are not to go with a Team on the publick High-ways with above Five Beaſts at Length, and if they ſhall Drive with a greater Number of Horſes or Oxen, they ſhall all draw in Pairs, that is, two a-breaſt, for ſuch Number as they ſhall uſe,

uſe, except one Horſe: And in defect of this, the Offender or Owner of the Waggon, Carriage, &c. forfeits 40 *s.* one third Part to the Surveyors of the High-way of the Town, Village or Hamlet where the Offence ſhall be committed, another third to the Overſeers of the Poor, and another to the Informer; and this to be impoſed on the Offender by any one Juſtice of the Peace of the Place or Diviſion where the Offence is committed, upon the Oath of one credible Witneſs, or upon the Juſtices own View, and to be levied by the High Conſtable or other Officer of ſuch Place or Diviſion, by Warrant. And a Surveyor, ſeeing and ſuffering Waggons or Carts to paſs with more Horſes &c. than mentioned, or in any other Order, may, upon Conviction for ſuch his Neglect, be Amerced by the Juſtice in any Sum under 40 *s.* to be levied on his Goods and Chattels.

FINIS.

Ent. S.A.R. 7/11/04